



(Unapproved and subject to change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Timestamps from [Commission Meeting 6/21/18](#)
Thursday, June 21, 2018

Under Government Code section 11123(a), all meetings of a state body are open and public, and all persons are permitted to attend any meeting of a state body, except as otherwise provided in that article. The section further states that the portion of the teleconferenced meeting that is required to be open to the public must be audible to the public at the location specified in the notice of the meeting. The Commission may take action on any item listed on this agenda.

CALL TO ORDER

Executive Director Erin Peth called the meeting to order at 10:00 am on June 21, 2018, at the Fair Political Practices Commission, 1102 Q Street, Suite 3800, Sacramento, CA 95811. Commissioners Cardenas, Hatch, and Hayward were present.

Welcome

- 1. Appointment of Vice Chair/Acting Chair.** The Commission will consider whether to appoint a Vice Chair and/or Acting Chair to serve as the Chair pro tem to preside over the June 21, 2018 meeting and/or preside over Commission meetings until the appointment of a new Chair pursuant to Government Code section 83101.

Ms. Peth: Good morning, Sasha would you call the roll please.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Here.

Sasha: Commissioner Hatch?

Commissioner Hatch: Here.

Sasha: Commissioner Hayward?

Commissioner Hayward: Here.

Ms. Peth: So since we are currently without a Chair the first item that staff has noticed on the June 21st agenda is the appointment of the vice Chair/acting Chair depending on which term is preferable to run this meeting and/or the Commission could also make a determination of someone to run future Commission meetings for any period of time or until a Chair is appointed

Commissioner Hatch: If I could be recognized to I would like to make a motion that we appoint as the vice Chair which is created in the governs or regulations Allison Hayward I've got to really know Allison working with her on the AdHoc committee I found her to be very very capable Commissioner and I think she'd do a fine job as vice Chair.

Commissioner Cardenas: second.

Ms. Peth: could I make one clarification. Would you like that to be until the governor appoints the Chair?

Commissioner Hatch: Well that's permanent as long as she is here she'd be vice Chair that's created in the

Ms. Peth: Ok

Commissioner Hatch: That's a separate issue for whether or not you want to have an acting Chair

Sasha: Commissioner Cardenas?

Commissioner Cardenas: We're calling for the question? Aye

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye

Sasha: Commissioner Hayward?

Commissioner Hayward: Aye

Sasha: the motion passes

Commissioner Hatch: that in the absence of a Chair then a vice Chair would Chair today

Ms. Peth: yes I believe that's correct

Commissioner Hayward: Alright then. Thank you all for coming. First talk about schedule before we get into the rest of the agenda the agenda notices that we may take a lunch break at approximately 12:30 we are also as the agenda shows looking at a closed session today for the convenience of people involved in the closed session we will probably break somewhere around 11:30 for that and my guess would be that would also be a lunch break and so just to let people know now first time I know business is there any public comment for items not on the agenda

Public Comment

- 2. Public Comment for Items not on Agenda.** During this comment period, any person is invited to speak on any topic that is not listed on this agenda. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on a future agenda. Those who wish to comment on an item that has been listed on this agenda may comment when that item has been opened for consideration by the Commission and before any action is taken.

Mr. Coupal: Good morning Madame vice Chair members the Commission my name is Jon Coupal I'm the president of the Howard Jarvis Taxpayers Association it's California's largest taxpayer advocacy organization over 200,000 members and we've been involved in a number of election issues over the past many decades including of course the original passage of proposition 13 which is just celebrated its 40th anniversary but I come here on a different matter today in 2016 the County of Los Angeles spent close to a million dollars campaigning for the passage of measure H a 355 million annual sales tax the county's political campaign funded with taxpayer dollars included sophisticated television commercials numerous internet advertisements and potentially other types of campaign ads as well these were not balanced these were full blown advocacy ads that stopped just short of saying vote YES on March 2nd 2017 I filed a sworn complaint with his Commission's enforcement division asking the Enforcement Division to investigate whether the county had broken the state's campaign disclaimer and disclosure laws now surprisingly on March 9 2017 Enforcement Division notified media in response to our complaint that they would indeed investigate the County Los Angeles actions relative to its measure H political campaign we also have a number of other pending issues with this Commission including a complaint against the county of San Luis Obispo for expending public funds for a failed transportation measure on March 17th of the same year 2017 I requested to our legal counsel of Bell McAndrews Hiltachk FPPC advice from the legal division regarding whether their ads virtually identical we took carbon copies of the county's ads flip the content to suggest a no vote essentially identical and asked do these required disclaimers and campaign finance disclosures on May 2nd of 17 when legal division confirmed that these ads absolutely constitute an expressed advocacy and we're subject to the excampaign reporting and advertisement disclaimer requirements during this process both Howard Jarvis Taxpayers in our council have provided the Enforcement Division with tons of documents that we secured to the through the Public Records Act from the County of Los Angeles we also provide our own independent legal analysis despite all the crystal clear implications or indications that the county of Los Angeles has broken laws the FPPC investigation has hit a brick wall it remains dead in the water and we don't know why meanwhile other cities and counties as we're approaching the November election are gearing up to follow La County's lead and wage publicly fund political campaigns of their own without regard to disclaimer or reporting requirements in fact LA County herself as in the kid is going to do the same thing with a multi hundred-million dollar stormwater runoff parcel tax we can't let them get away with this again all of this makes a mockery of FPPC's proud in public stance against dark money in no other instance will be enforcement division wait this long by a massive name dollar dark money case in 2012 the FPPC was filing an expedited lawsuits against political committees and other organizations demanding judicial

intervention and court orders to force donor disclosure prior to election day at that time its chief of enforcement who is now in private practice ironically representing the county of Los Angeles in this case said quote “The FPPC will continue to aggressively enforce campaign disclosure laws as we did in this case.” Aggressive enforcement is what is absolutely necessary here but it is not happening in past times the FPPC enforcement division it is past time that the FPPC enforcement division move this critically important case perhaps more important than any other active case forward with the speed and all the resources it deserves. And we and our counsel Bell Mc Andrews are ready willing able to expedite this in any way that is appropriate and I appreciate your time I welcome to take any questions if there are any

Commissioner Hayward: Thank you, Mr., Coupal. Its not an item that’s been noticed on the agenda so we cannot deliberate on it moreover Commissioners are walled off from a lot of what happens in enforcement for due process reasons so I welcome your comments though individually and I hope that as the enforcement review moves forward that we are just beginning your organization participates and tell us what you know about how we enforce the law

Mr. Coupal: Ok we will do and we just wanted to put this on your radar that we’re getting very frustrated at this point

Commissioner Hayward: Duly noted

Mr. Coupal: Thank you

Approval of Commission Minutes

3. Approval of May 2018 Commission Hearing Minutes.

4. Approval of June 4, 2018 Commission Hearing Minutes.

Commissioner Hayward: Moving on to agenda item number three approval of May 2018 Commission Hearing minutes are there any amendments to the minutes comments on the minutes

Commissioner Hatch: I move adoption of the minutes

Commissioner Cardenas: second

Sasha: Commissioner Cardenas?

Commissioner Cardenas: yeah

Sasha: Commissioner Hatch?

Commissioner Hatch: aye

Sasha: Commissioner Hayward?

Commissioner Hayward: yes

Sasha: the motion passes

Commissioner Hayward: The next item on our agenda is item number four approval of the June force 2018 Commission hearing minutes any comments amendments do I hear a motion

Commissioner Hatch: I move adoption of June fourth minutes

Commissioner Cardenas: Second

Sasha: Commissioner Cardenas?

Commissioner Cardenas: yes

Sasha: Commissioner Hatch?

Commissioner Hatch: aye

Sasha: Commissioner Hayward?

Commissioner Hayward: aye

Sasha: the motion passes

Enforcement Consent Calendar 5-24

Items on the consent calendar will be taken up and voted on as a group. A Commissioner may request that an item be removed from consent, in which case it will be discussed separately in the meeting.

Commissioner Hayward: okay moving on to the enforcement consent calendar as has been the practice I will ask first whether or not people have items on the consent calendar that they wish to pull and then secondly if they're not necessarily opting to pull them but they would like to ask questions about them so let's go to pools first there any items on the consent calendar that a Commissioner would like to see pulled any items on the consent calendar that Commissioners have questions on but would not necessarily want to see them pulled

Commissioner Hatch: yes 8 9 10 14 15

Commissioner Hayward: Alright then let's move adoption of the enforcement consent calendar

10:00 Ms. West: May I interrupt first I would like to point out this is Galena West Chief of enforcement we are pulling item 23 which is a default that we have had settlement progress on we will be presenting it July meeting

Commissioner Hayward: I knew that and I blew right passed it and I apologize for that that's good news I like it with defaults come come to the table it except it won't feel a little better okay so enforcement consent calendar five six seven eleven twelve thirteen and sixteen through 22 right because we're 23 and 24 is a final notice it's not it was 24 the for us yes okay sorry and 24 do I hear a motion the enforcement consent calendar

Commissioner Hatch: I so move

Commissioner Cardenas: second

Sasha: Commissioner Cardenas?

Commissioner Cardenas: yes

Sasha: Commissioner Hatch?

Commissioner Hatch: aye

Sasha: Commissioner Hayward?

Commissioner Hayward: aye

Sasha: the motion passes

Commissioner Hayward: okay so let's hear from Commissioner Hatch about questions on the matters that he specified

Commissioner Hatch: Thank you I would like a little better understanding on a couple of terms that were used in this case what constituent featured there's a term was used

Ms. West: for item number eight

Commissioner Hatch: yes

Ms. West: okay so featured as you know the legislation that just went that passed this last time took all of our mass mailing at public expense different regulations put them into statute but this is from a case where it was still in the regulation but the language is identical so I'll refer to this statute but it was in the regulation at the time

Commissioner Hatch: its identical

Ms. West: so basically when an item that is sent via public entity features a an elected official and signals them out in some way usually with their photographs or signature and some way gives them a leg up and uses their office to promote them and and their agency is promoting them in some way it's considered an unequal treatment for then anybody that wants to run for that office if the agency is using publications to promote a person that can be up for election so that's what happens here so this is a County Water District and it sent out a publication that's featured through a photograph with a caption about a reward for one of their elected officials which was their director of the district's Board of Directors and so 22,000 copies were sent to the letter and features is defined as item mailed includes the elected officers photograph or a signature or singles out the elected officer by manner of display of his or her name or office in the layout of the document

Commissioner Hatch: so it doesn't have to be about their candidacy it just has to be about them

Ms. West: right it just has to be about them and promoting them so there's a second standard which is what gets confusing and that's when the official themselves coordinates with the agency to send out something then the standards lower doesn't photograph it just has to be a singling out and so that there's two different standards and this was the standard applied because we didn't find evidence that she coordinated with them to send out the mailing

Commissioner Hatch: okay was this edition was this the only article or was there the usual stuff

Ms. West: it seems like it took took majority of newsletter so one half was in English and the other content was in Spanish and it was a large portion of it it was "AquaTalk," bilingual quarterly newsletter and it was

Commissioner Hatch: But there were other subject matters

Ms. West: right it was a newsletter a legitimate newsletter so we didn't find it to be a campaign piece

Commissioner Hatch: and you didn't find any concerted activity did you say

Ms. West: right we didn't find coordination

Commissioner Hatch: did not?

Ms. West: no we did not so it fall on to the second standard where if you just mention them and you didn't coordinate with them then that's nothing but if you put their picture and their signature and their accolades then that's

Commissioner Hatch: did you find evidence to of intent to violate the section or just you

Ms. West: no the stipulation says that it appeared that the staff was unaware of the requirements

Commissioner Hatch: thank you

Ms. West: You're welcome

15:00 Commissioner Hatch: I guess I have the next one too item 9 this was raised in an FTB audit I believe

Ms. West: yes

Commissioner Hatch: my question was is a cashier's check considered to be cash I didn't find it in the statute but the settlement those terms could you illuminate how we

Ms. West: certainly

Commissioner Hatch: is this cash rather than a cashier's check or a personal check out of my bank account

Ms. West: right so this comes directly from the statute 84300 where it talks about cash contributions being prohibited but the requirement really reads that it has to be drawn on the account of the contributor so in this case it wasn't shown that it was drawn on the account of the contributor and there are cases where someone has done a cashier's check like a personal check where it's drawn on their account and their bank verifies that it's from their account and that meets the requirement but most cashier's checks don't they don't have the information and they aren't traceable back to the account so it's considered an end-around to a cash contributions basically anonymous contributions 84300 as a statute prohibits it

Commissioner Hatch: Ok but explicitly prohibits cash contributions over ninety nine dollars

Ms. West: in contributions not drawn on your account

Commissioner Hatch: right but to say that all cashier's checks are cash may not be true then

Ms. West: well this statement is I know that the statement is generally used as a advisory tool in manuals to say hey don't accept cashier's checks because you don't know where they came from but there are exceptions where it can be traced back so as an absolute rule no but as advice given by the campaign manuals and such then yes

Commissioner Hatch: I may be a little goldielocks here but the only cashiers checks I've ever drawn were when I go into my bank and issue the check and have my name and address on it as the issuer that was drawn on my bank account you know so those criteria

Ms. West: you sound very legitimate

Commissioner Hatch: it was to buy a house but

Ms. West: right no and there are many instances where you draw a cashier's check not from your account you can bring in cash you can do a cash checking

Commissioner Hatch: but we don't want to encourage them but maybe we should be a little clearer all we have right now as a statute right

Ms. West: right

Commissioner Hatch: we don't have a regulation on this

Ms. West: it's definitely something that can be put on the reg calendar for clarity I'm sure Brian would like to add it

Commissioner Hatch: [Laughter] put it on top of that pile of stuff he already has

Ms. West: its funny when you do this [had extended motion] I like that a lot

Commissioner Hayward: Hes still getting work done

Commissioner Hatch: thank you and then I guess then next one is mine also

Commissioner Hayward: they're all yours this month

Commissioner Hatch: Item 10 as I recall Burbank hospitality Association is actually a nonprofit created by the city itself the hospitality Association among other things has been the source of contributions I think those local ballot measures local governments and the state is prohibited from making contributions political contributions either candidates or ballot measures how do we get it that its okay for them to create a device to do that which they're not allowed to directly do

Ms. West: This is actually a very relevant topic as Mr. Coupal alluded to

Commissioner Hatch: I'm sorry he left so early

Ms. West: so although there are other laws that talk about the misuse of public funds the use of public funds in campaigns there are also exceptions to those laws so we don't interpret those and we don't see whether or not you're violating those laws when we interpret what you have to do under the Act if you have campaign activity so whether or not these are legal expenditures would be someone else's domain

Commissioner Hatch: so in other words the prohibition about spending public money on campaigns is not in the PRA

Ms. West: right

20:00 Commissioner Hatch: okay I didn't realize that interesting loophole

Commissioner Hayward: Moving on to 14

Commissioner Hatch: okay item 14 and 15 together these are both streamline settlements they're both involved the same candidate for two different offices I think but they're brought before us at the same time one of the criteria of being a streamline settlement is that you have to not basically have enforcement action against you prior and I guess the streamline settlement because there was no prior action but they're both on at the same time was it seems kind of odd it seems like one of them would be streamline and the other but not

Ms. West: it does seem kind of odd so two things so one of them is a spinoff of the other so they all kind of occurred contemporaneously in enforcement and so treating one as a prior of the other seemed unfair as a practice because you don't have notice of your violation in order to correct so in order for it to be a prior you had to have some sort of time to remedy your actions

Commissioner Hatch: okay thank you that's all I have

Commissioner Hayward: well then let's go ahead and as a group move approval of enforcement matters eight nine ten fourteen fifteen and not 23 because 23 is not with us right now do I hear a motion

Commissioner Hatch: yes I motion

Commissioner Cardenas: second

Sasha: Commissioner Cardenas?

Commissioner Cardenas: yes

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye

Sasha: Commissioner Hayward?

Commissioner Hayward: Aye

Sasha: the motion passes

Advertisements

- 5. In the Matter of Fair Rents 4 Pacifica, Julie Starobin, and Thursday Roberts; FPPC No. 17/1217.** Staff: Commission Counsel Christopher Burton and Political Reform Consultant Tara Stock. Fair Rents 4 Pacifica is a local ballot measure committee created to support City of Pacifica Measure C, which appeared on the November 7, 2017 Special

Election ballot. Julie Starobin was the Committee's treasurer. Thursday Roberts is the Committee's principal officer. The Committee, Starobin, and Roberts failed to timely change the name of the Committee to reflect the supported ballot measure, and failed to include "Measure C" in the Committee's name on mass mailings and advertisements, in violation of Government Code Sections 84103, 84107, 84305, and 84504 (1 count). **Total Proposed Penalty: \$3,500.**

6. **In the Matter of Save Open Space & Agricultural Resources, Inc. (A controlled committee by Ventura County Supervisors Steve Bennett and Linda Parks), FPPC No. 16/19636.** Staff: Assistant Chief Dave Bainbridge and Special Investigator Jeffrey Kamigaki. Save Open Space & Agricultural Resources, Inc. (A controlled committee by Ventura County Supervisors Steve Bennett and Linda Parks) is a local general purpose ballot measure committee in Ventura County. The Committee failed to include proper advertising disclosure statements on electronic advertisements, in violation of Government Code Section 84504, subdivision (c) (1 count). **Total Proposed Penalty: \$3,000.**

Mass Mailings

7. **In the Matter of Margaret "Peggy" Moore and Moore for Oakland City Council At-Large 2016; FPPC No. 16/19843.** Staff: Commission Counsel Christopher Burton, Special Investigator Paul Rasey, and Political Reform Consultant Teri Rindahl. Margaret "Peggy" Moore was an unsuccessful candidate for the at-large seat on the Oakland City Council in the November 8, 2016 General Election. Moore for Oakland City Council At-Large 2016 was Moore's candidate-controlled committee. The Committee and Moore failed to include the proper sender identification on two mass mailings, in violation of Government Code Section 84305 and Regulation 18435 (1 count). **Total Proposed Penalty: \$2,500.**

Mass Mailing at Public Expense

8. **In the Matter of West Valley Water District; FPPC No. 17/549.** Staff: Commission Counsel Ruth Yang and Special Investigator Roone Petersen. West Valley Water District serves approximately 80,000 customers in SouthweStern San Bernardino County and NorthweStern Riverside County. West Valley Water District prepared and distributed a mass mailing featuring an elected official at public expense, in violation of Government Code Section 89001 (1 count). **Total Proposed Penalty: \$2,000.**

Campaign Reporting

9. **In the Matter of Roger Aceves for Supervisor 2014, Roger S. Aceves, and Tony Vallejo; FPPC No. 17/145.** Staff: Commission Counsel Christopher Burton and Program Specialist Patricia Ballantyne. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Roger S. Aceves was a member of the Goleta City Council and a candidate for Santa Barbara Supervisor, District 2 in the

June 3, 2014 Primary Election. Roger Aceves for Supervisor 2014 was his candidate-controlled committee. Tony Vallejo was the Committee's treasurer. The Committee, Aceves, and Vallejo failed to provide sufficient notice to 21 potential major donor committees that contributed a total of \$208,320, in violation of Government Code Section 84105 and Regulation 18427.1 (1 count); accepted cash contributions of \$100 or more, totaling \$5,100, in violation of Government Code Section 84300, subdivision (a) (1 count); and failed to timely report \$261,299.21 in subvendor payments, in violation of Government Code Sections 84303 and 84211, subdivision (k)(6) (2 counts). **Total Proposed Penalty: \$7,500.**

Campaign Non-filer

- 10. In the Matter of Burbank Hospitality Association; FPPC No. 18/113.** Staff: Commission Counsel Christopher Burton. Burbank Hospitality Association is a major donor committee. The Committee failed to timely file one semiannual major donor campaign statement for the reporting period of July 1, 2016 through December 31, 2016, in violation of Government Code Section 84200, subdivision (b) (1 count); and failed to timely file one 24-Hour Report, in violation of Government Code Section 84203 (1 count). **Total Proposed Penalty: \$5,000.**
- 11. In the Matter of California RoofPAC and Marc Connerly; FPPC No. 16/39 (Streamline Settlement).** Staff: Commission Counsel Michael W. Hamilton and Program Specialist Bob Perna. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. The California RoofPAC is a state general purpose committee. Marc Connerly is the Committee's treasurer. The Committee and Connerly failed to timely file six pre-election campaign statements covering the reporting periods of October 1, 2012 through October 20, 2012, January 1, 2014 through May 17, 2014, July 1, 2014 through September 30, 2014, and January 1, 2016 through May 21, 2016, in violation of Government Code Section 84200.5 (6 counts). The Committee and Connerly also failed to timely file eight 24-Hour Reports, in violation of Government Code Section 84203 (8 counts); and failed to timely report one expenditure on the semiannual campaign statement covering the reporting period of July 1, 2013 through December 31, 2013, in violation of Government Code Section 84211 (1 count). **Total Proposed Penalty: \$3,716.**
- 12. In the Matter of Committee to Elect Bruce Kuhn for Imperial Irrigation District Director Division #2, Bruce Kuhn, and Angela Suchma; FPPC No. 16/210 (Streamline Settlement).** Staff: Senior Commission Counsel Bridgette Castillo and Associate Governmental Program Analyst Dominika Wojenska. Bruce Kuhn was a successful candidate for the Imperial Irrigation District Board of Directors in the November 6, 2012 General Election and June 7, 2016 Primary Election. Committee to Elect Bruce Kuhn for Imperial Irrigation District Director Division #2 was his candidate-controlled committee. Suchma was the Committee's treasurer. The Committee, Kuhn, and Suchma failed to timely file two semiannual campaign statements for the reporting periods of January 1, 2015 through December 31, 2015, in violation of Government Code

Section 84200 (2 counts); failed to timely file one pre-election campaign statement for the reporting period of January 1, 2016 through April 23, 2016, in violation of Government Code Section 84200.5 (1 count); and failed to timely file two 24-Hour Reports, in violation of Government Code Section 84203 (2 counts). **Total Proposed Penalty: \$1,400.**

- 13. In the Matter of Long Beach Citizens' and Patients' Rights PAC and Jeremy Coltharp; FPPC No. 15/811.** Staff: Commission Counsel Theresa Gilbertson and Special Investigator Rooney Petersen. Long Beach Citizens' and Patients' Rights PAC was a primarily formed committee formed to sponsor a local medical marijuana ballot initiative in 2013 and 2014. Jeremy Coltharp was the Committee's principal officer and assistant treasurer. The Committee and Coltharp failed to timely file two semiannual campaign statements for the reporting periods of January 1, 2014 through December 31, 2014, in violation of Government Code Section 84200 (1 count). **Total Proposed Penalty: \$1,000.**
- 14. In the Matter of Darcie Green, Friends of Darcie Green for County Trustee 2014, and Desiree Green; FPPC No. 16/287 (Streamline Settlement).** Staff: Senior Commission Counsel Neal Bucknell and Program Specialist Soni Mangat. Darcie Green was a successful candidate for the Santa Clara County Board of Education in the November 4, 2014 General Election. Friends of Darcie Green for County Trustee 2014 was her candidate-controlled committee. Desiree Green was the Committee's treasurer. The Committee, Green, and Green failed to timely file three 24-hour reports, in violation of Government Code Section 84203 (3 counts). **Total Proposed Penalty: \$645.**
- 15. In the Matter of Darcie Green, Darcie Green for State Assembly 2016, and Desiree Green; FPPC No. 18/259 (Streamline Settlement).** Staff: Senior Commission Counsel Neal Bucknell and Program Specialist Soni Mangat. Darcie Green was an unsuccessful candidate for the California State Assembly in the April 4, 2016 Primary Election. Darcie Green for State Assembly 2016 was her candidate-controlled committee. Desiree Green was the Committee's treasurer. The Committee, Green, and Green failed to timely file a Statement of Organization (Form 410), in violation of Government Code Section 84101 (1 count); and failed to timely report contributions on a pre-election campaign statement, in violation of Government Code Section 84211 (1 count). **Total Proposed Penalty: \$422.**
- 16. In the Matter of Bill Hodge and the Committee to Elect Bill Hodge for Calexico City Council 2016; FPPC No. 18/241 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Bill Hodge was a successful candidate for Calexico City Council in the November 8, 2016 General Election. The Committee to Elect Bill Hodge for Calexico City Council 2016 was his candidate-controlled committee. The Committee and Hodge failed to timely file one 24-Hour Report, in violation of Government Code Section 84203 (1 count). **Total Proposed Penalty: \$247.**

- 17. In the Matter of Jose Barraza for Fresno City Council District 5-2016 and Jose Barraza; FPPC No. 18/183 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Jose Barraza was an unsuccessful candidate for Fresno City Council in the November 8, 2016 General Election. Jose Barraza for Fresno City Council District 5-2016 was his candidate-controlled committee. The Committee and Barraza failed to timely file one semiannual campaign statement for the reporting period of October 23, 2016 through December 31, 2016, in violation of Government Code Section 84200 (1 count). **Total Proposed Penalty: \$235.**
- 18. In the Matter of Yes on Measure Q for Dixon Schools and Frances Garcia; FPPC No. 16/20140 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Associate Governmental Program Analyst Dominika Wojenska. Yes on Measure Q for Dixon Schools is a primarily formed ballot measure committee supporting a local school bond measure on the November 8, 2016 General Election ballot. Frances Garcia is the Committee's treasurer. The Committee and Garcia failed to timely file one pre-election campaign statement for the reporting period of September 25, 2016 through October 22, 2016, in violation of Government Code Section 84200.5 (1 count). **Total Proposed Penalty: \$216.**
- 19. In the Matter of Selma Unified Teachers Association Political Action Committee, and Sylvia Emmersen; FPPC No. 18/223 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Sylvia Emmersen served as the Committee's treasurer. The Committee, and Emmersen failed to timely file one semiannual campaign statement for the reporting period of July 1, 2017 through December 31, 2017, in violation of Government Code Section 84200 (1 count). **Total Proposed Penalty: \$200.**

Statement of Economic Interests Non-Filer

- 20. In the Matter of Carol Chorbajian, FPPC No. 16/408 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson. Carol Chorbajian serves as a Commissioner for the Measure P Oversight Committee for the City of Monterey. She failed to timely file an Assuming Office Statement of Economic Interests and a 2015 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (2 counts). **Total Proposed Penalty: \$800.**
- 21. In the Matter of Miguel Navarrette; FPPC No. 18/137 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Miguel Navarrette, a Board Member of the Raisin City Elementary School District in the County of Fresno, failed to timely file his Assuming Office Statement of Economic Interests, in violation of Government Code Section 87202 (1 count). **Total Proposed Penalty: \$200.**

Statement of Economic Interest Non-Reporter

22. In the Matter of Dene Bustichi; FPPC No. 16/20095 (Streamline Settlement). Staff: Commission Counsel Christopher Burton and Special Investigator Paul Rasey. Dene Bustichi, former member of the Scotts Valley City Council, failed to timely disclose a loan in the amount of \$250,000 from Richard Fontana on his 2013 Annual Statement of Economic Interests, in violation of Government Code Section 87207, subdivision (a) (1 count). **Total Proposed Penalty: \$100.**

Default Proceedings

Default Proceedings Requesting Commission Action

23. In the Matter of Al Bairos and Committee to Re-elect Al D. Bairos OID Director District #4 2015; FPPC No. 15/1876 (Default Decision – Final Notice). Staff: Assistant Chief Dave Bainbridge, Special Investigator Garrett Micheels, and Associate Governmental Program Analyst Dominika Wojenska. Al Bairos was an unsuccessful candidate for re-election to the Oakdale Irrigation District in the November 3, 2015 General Election. Re-elect Al D. Bairos OID Director District #4 2015 was his candidate-controlled committee. The Committee and Bairos failed to disclose contributions and expenditures, in violation of Governmental Code Section 84211 (1 count); failed to file two semiannual campaign statements for the reporting period of June 1, 2015 through June 30, 2017, in violation of Government Code Section 84200 (4 counts); and failed to include a proper disclaimer on a mass mailing, in violation of Government Code Section 84305, subdivision (a) and Regulation 18435, subdivision (d) (1 count). **Total Proposed Penalty: \$16,000.**

24. In the Matter of Roberto Reyes; FPPC No. 16/160 (Default Decision – Final Notice). Staff: Commission Counsel Theresa Gilbertson. Roberto Reyes served as a Planning Commissioner for the City of Richmond. Reyes failed to timely file an Annual Statement of Economic Interest for 2014, in violation of Government Code Section 87200 and 87203. (1 count). **Total Proposed Penalty: \$3,000.**

General Items 25-37

25. Update from Ad Hoc Committee Formed to Develop the Membership of the Enforcement Review Task Force. Staff: Adam Silver, Staff Counsel, Legal Division. At its May 2018 meeting, the Commission voted to create a task force group to review the Enforcement Division's priorities and processes. The Commission directed Commissioners Hayward and Cardenas to solicit representatives from several stakeholder groups identified by the Commission to serve on the task force. Invitations were distributed to the stakeholders identified by the Commission and staff created a list of those individuals who have agreed to participate on the task force.

Enforcement Task Force Membership List

Commissioner Hayward: do we wanna do 24 ok good ok agenda item 25 is a personnel and lovely leaders of society who have agreed to be part of our task force mister Silver the floor is yours

Mr. Silver: Good morning Commissioners Adam Silver Commission counsel legal division presenting on item 25 at its main meeting the Commission voted to convene a task force to review the enforcement divisions priorities and procedures Commissioners Hayward and Cardenas in conjunction with FPPC staff have become soliciting representatives from stakeholders to participate on this task force as of yesterday we have 15 confirmed participants an updated roster can be accept accessed on the enforcement review tab on our website I would be happy to answer any questions that Commission has on us

Commissioner Hatch: I see we still have some blanks so continue to pursue that or

Commissioner Hayward: Well I know the mind of me I let Commissioner Cardenas speak for himself I figure at some point even if we have some blanks we should go ahead and have an organizational phone call and get the ball rolling and I guess the question there would be how many blanks is acceptable or we decide that we can move forward and I am open to what people think about that

Commissioner Cardenas: the roster for the task force contemplates about twenty six individuals

Commissioner Hayward: and I think you have

Commissioner Cardenas: this is not correct

Commissioner Hayward: yeah you have the updated one

Commissioner Cardenas: so this shows 15 I believe individuals who have identified as being ready willing and able

Mr. Silver: that's correct

Commissioner Cardenas: some combination thereof

Mr. Silver: then there's eleven vacancies and I spoke with the general council of California institute of governmental advocates and it sounds like they're they're gonna have one soul representative which would be their general counsel

Commissioner Hayward: so that one line item is gone and then we've had communications I believe with the California Assembly seem to recall emails of but not any identified individuals so

25:00 Mr. Silver: so we have sent the invites out our communications have primarily gone through our external director Phil Ung so any questions related to that I would direct to Phil

Commissioner Hayward: ok

Mr. Silver: but I can tell you that we haven't received a response yet as to their participation

Commissioner Hayward: right understood and we haven't received anything from the political treasurers

Mr. Silver: that's correct

Ms. Peth: Commissioner Hayward I just wanted to know when we're doing the outreach we've also been letting people know that they can also just comment because the taskforce meetings will be public meetings where they at any point in time can write a letter so if to the extent groups don't have the resources or for whatever reason to designate a specific individual to be on the calls they're welcome to comment anytime so we are making that known including to the treasurers because I think there's just an issue of peoples time and especially an election year but we want to make sure people know they have opportunity to comment at any time

Commissioner Hayward: yeah that's a good observation I think maybe that suggest that people know what we're doing they know they can comment certain groups are particularly enthusiastic and want to be on all the calls and other groups not so much I think given that observation I'd suggest we move forward with who we have and direct staff to organize a organizational conference call of some kind I don't know to what extent you want Commissioners to be involved in that it might be nice for the first one just for us to be on the line to say hello thank you maybe nudge them toward thinking their own Chair and vice Chair because that's a second-order business that they need to do once they organize how does that sound?

Commissioner Cardenas: Commissioner Hayward that is to move forward and schedule an organizational conference call with the understanding that those slots which are unfilled may be filled by such so we're not closing the ranks cool

Commissioner Hayward: good do we need a motion and a build on this or is that advice to staff sufficient for the day

Ms. Peth: It seems we understand the direction so I don't know that it has to be a formal vote

Mr. Silver: Is there a specific timeline for the meeting you prefer?

Commissioner Hayward: I would think that strike while the iron at least is somewhat warm and so in the next month couple of weeks maybe so we'll have something to say maybe even if we don't may not make close the next agenda but maybe at the next meeting we might be able to have something to say Mr. Lau you're grabbing your

Mr. Lau: You mentioned having Commissioners on the phone line obviously if there's three Commissioners on the phone line you have to go through public

Commissioner Hayward: It would just be the people who have been involved in selecting the task force

Mr. Lau: No problem

26. Bitcoin. Staff: Zachary Norton, Senior Commission Counsel, Legal Division. The Commission will begin a review of the question whether Bitcoin or other cryptocurrencies are permitted currencies for campaign contributions with the ultimate goal of setting a policy on this issue recognizing that such a policy may require more than one meeting. At the June 2018 meeting the Commission will, in addition, consider and vote on two immediate issues. One, whether to revise, or withdraw altogether, question 24 from the campaign activity FAQ's, and two, whether to issue a press release advising that the FPPC does not have a policy on cryptocurrencies as campaign contributions. At the direction of the Commission, the Executive Director has gathered all existing research regarding Bitcoin, including, specifically, the "extensive research" cited in question 24 and provided it to the Commission and the public as part of the agenda item. All existing research located has been provided and no documents have been withheld.

Staff Memo and Related Documents

Commissioner Hayward: I should have been clearer what I meant in my head alright good Bueno alright Item 26 Bitcoin who has become an expert in blockchain technology

Mr. Norton: good morning vice-Chair Hayward and Commissioners I'm Zachary Norton senior counsel with the legal division and here with me is Trish Mayer assistant chief at the Legal Division and we're here to answer any questions regarding the prior staff research on Bitcoin

Commissioner Hayward: thank you anybody like to be recognized with questions or comments on Bitcoin

Commissioner Hatch: at this point I'd like to hear what they have to say then I would be able to express some things

Commissioner Hayward: Does staff at this point have a view I'm not going to call it position because that sounds official I mean you've all read the stuff we have what do you think

Mr. Lau: at this point it comes down to two seems to come down to two options bitcoin is more like cash or bitcoin is more like stock or some other asset that you value and they have characteristics of both so it's really we still haven't really done a full amount of research at this point we were directed to provide the research that's been provided obviously it's older research because that information has been out for a while we would want to further research it before you know ultimate recommendation but at this point it does seem like there is two distinct possibilities one is to treat it like cash with 100 dollar kind of limits and making sure it was goes

30:00

into the payment account or treating it like a stock like I said there's characteristics of both so it's kind of open it's obviously the question that jurisdictions our having some difficulty answering

Mr. Norton: Zachary Norton I'm just to add to that we have not done research going forward most of this involves gathering the research that had been done previously but from what I have looked at more contemporaneous developments I don't think these questions are settled I think they're still disagreement among various jurisdictions exactly how bitcoin is treated so you know the issues that are presented in the prior research have not been entirely resolved universally

Commissioner Hayward: understood part of our job is to resolve them for California it so Commissioner Hatch

Commissioner Hatch: a couple questions one is that if someone was to contribute to campaign here in British pounds or Swiss francs our candidates are not allowed to accept that correct

Mr. Lau: I have not seen any kind of advice to that effect I would say they aren't allowed to receive contributions from foreign entities but if a American citizen happened to have Canadian dollar stored up and wanted to contribute them It would be a similar kind of question is obviously more the characteristics there are cash so the question becomes are they allowed to accept up to 100 dollars and its just converted and put into their account I suspect we would permit that accept the cash ultimately up to the 100 dollar point and then deposit it into your account so I think that's how we would in all likelihood that's how we would treat foreign money from a citizen that's permissible

Commissioner Hatch: yeah and bitcoins aren't backed by any government right

Mr. Lau: Right

Commissioner Hayward: It's kind of the idea

Commissioner Hatch: Very much in the nature of stock right in the sense that it

Mr. Lau: in that sense, yes

Commissioner Hatch: placing value there's no official backing of any government it's being good when you want it

Mr. Lau: right I would agree in that sense its more like stock but as far as the traceability and actual use of it has similarities to cash at the same time so

Commissioner Hayward: yeah I Mr. Cardenas

Commissioner Cardenas: this is a fascinating fascinating area I don't even know where to begin to to think about this it's so it's so such a vague vague entity defines definition yeah is it cash or is it stock one thing about one thing about stock is that it is not in this country not nearly

as easily manipulable before now as it was before that is that is a the stock price Bitcoin as recent news reports suggest it's highly susceptible it was the last week or the week before there was a 30 million dollar manipulation of one of the crypto currencies by the way bitcoin is only one of what 80 or 100 I mean

Mr. Norton: there's several hundred

35:00 **Commissioner Cardenas:** yeah there's probably half a dozen people in this room who have their own type of crypto currency its like the newest when I was a kid it was a pair of rocks and now its like yeah and recently it was you know you can name a star after your loved one I got my own currency we'll see who's left standing but so in that sense it fluctuates but the thing about American stock after 34 is that we have a greater degree of certainty that it's not being manipulated and that's not the case with crypto currency bitcoin and otherwise so it's not just that it can fluctuate a its that b it fluctuates wildly particularly since this past January from what I understand and c which is probably very much related to b it is quite apparently quite susceptible to manipulation and we have an scc that can try and figure out who is manipulating the stock price and insider trading whatever there is no regulatory entity anywhere that I am aware of that can perform the same function or is even seeking to perform the same function with respect to borderless crypto currencies to say not even to begin to speak of traceability issues it certainly needs to be it certainly needs to be considered some position needs to be needs to be arrived at but I think when what I am primarily concerned about is what are the types of questions that should even guide our entertainment of how we might deal with this with this reality but I guess the worst possible outcome is someone drops a bunch of anonymous untraceable Bitcoin or cryptocurrency on the last day of a campaign and there's no way of knowing where in the world literally where in the world it came from and how it fluctuates thereafter well then I guess that's the that's the recipients problem because what if it tanks what if someone drops a significant amount of a particular cryptocurrency let's say one that doesn't have a wide circulation base and therefore is more susceptible to to manipulation and and then manipulates it purposefully right after dropping it so as to complicate things for the recipient and for us its just potential scenarios are mind boggling so I am hoping that staff can help us arrive at perhaps by some kind of environments scan I understand Kansas this past October said no other states have said in varying degrees and varying ways yes but the FEC FEC has produced only guidance for whatever that might be worth and I don't know that they were looking at it since whenever they did in 14 or 15 but we are the types of of decision points and key issues like traceability anonymousness that states have been looking at as they try to figure their way through the same hiccup

Commissioner Hatch: another question

Commissioner Hayward: Commissioner Hatch

Commissioner Hatch: in the issue of I've heard some of the stuff I read concept of being treated as the a in-kind contribution in fact in-kind contributions typically literally materials and services that advance the campaign in other words like providing the tables and Chairs for an event or you know catering the food for an event those kind and putting up signs that you made yourself

those are kind of in-kind things but the concept of giving money or something equivalent to money something that can be converted to money is an in-kind contributions seems kinda like it doesn't really fit what's your

Mr. Lau: I come back to what is it if it have we treated it like money and cash then it doesn't quite fit in-kind is by definition just a non-monetary contribution so if it's some sort of property right that just happens to have value then it a non- monetary and in-kind contribution if it's treated like money cash then that is treated as something entirely different

Commissioner Hatch: take this sort of a logical versus - it's ridiculous extent what if I donated a thousand pounds of marijuana to a candidate is that and in-kind contribution you can convert it to cash

Mr. Lau: yes I believe

Commissioner Hayward: and he wouldn't have the right license to turn it into cash to spend money right otherwise it's a great idea

Commissioner Hatch: but I mean you see what I'm saying is it like is an in-kind contribution supposed to have something to do with the campaign advancing the campaign's interest

Mr. Lau: I mean I don't see one example much different than someone who contributes food to a campaign which is an in-kind contribution

Commissioner Hatch: right but that's like a fundraising event or a volunteer event something that advances the campaign's interest directly as opposed to just give you something you can convert to cash to pay for things that seem like it's a different class of things it kind of deployed I think I'm trying to venture

40:00 Mr. Lau: I think that's the whole situation just across the border of these cryptocurrencies

Commissioner Hatch: like if I donated my car to a campaign maybe they can use it to pick up volunteers I don't know but it's not the same as you know in-kind printing at the givers expense data analysis for doing a walk list kinds of things there directly advance the interest of a campaign whereas these other things are just like sort of alternative ways of putting cash at their disposal it doesn't seem to fit in kindness I think the point I'm trying to make

Commissioner Hayward: I've been involved with entities that have received in-kind like computer printers they can't use and they turn them into cash but the cash in the account to spend the cash so it's kind of I think there's a continuum of things that for campaign finance purposes they're all in kinds but certainly from the campaign's perspective it would be a little different so I'm hearing that we would like staff to consume continue pursuing some of these questions I mean the questions I have are largely the ones that have been brought up by my colleagues you know like you know is it is it more like cash or is it more like a valuable thing that's not cash there's all sorts of examples of artists giving paintings to campaigns and I don't know probably

somebody's tried to pawn off their grandmother's sterling silver on a campaign at some point and I just made that up I don't actually know that you know timing issues how quickly does a campaign have to liquidate a thing that's valuable when is the value demarked you know what are the limits the cash limit or terms of State Legislative campaigns you know our state contribution limit of course there's jurisdictions that have no contribution limits and then might be actually the easier hypotheticals to come up with at least initially I mean I guess in my head I was thinking that crypto currencies were sort of like if you had a donor out there who wanted to give gold bullion you know you know how much its worth because there's a very good market for that do we know that the person who is giving you the gold bullion is actually the owner of the gold bullion there's a question there I don't know and then the other thing that came to me as I was thinking about this yesterday driving down from little camp is that while cryptocurrencies are designed to be sort of anonymous and outside of any government's banking system private system the blockchain technology quite brilliantly makes sure that you know the provenance of then thing you have in front of you without issue I understand there are other contexts where people are looking at blockchain as a way of you know ensuring that property titles are robust in countries that don't have good title registration systems and other things like that so as we're looking at the sort of weird cryptocurrency question I think it'd be neat to have about four lines that actually blockchain technology might change a lot of things about how we do things here in a very good way in not yet but in ten who knows so with that little bit of wisdom shall we just let staff go ahead and come back to us with more up to date research maybe some information about how other types of entities deal with this I know charities take Bitcoin you know how's that working how other states have looked at this question to the extent that the FEC has come back to it if anything useful is there lets go look there any other places we want to tell them to look

Commissioner Hatch: was an update because the stuff on AFC FEC was like dated a 13 like five years ago yep if there's thinking is it more evolved now unless even though they may not have actually voted on something officially the concept of it being anonymous just like the gold bars you were talking about there has to be some kind of it seems in troubles me that somebody would show up with something that is of value that they may or may not actually own and that they're doing it on behest of someone else and for us to even venture into this area we'd have to have some some kind of method to you know verify that the true giver of course there's another issue of is if it's in-kind does that mean it's not subject to the hundred dollar limit because it's not cash is that a good thing or a bad thing you know

45:00

Ms. Peth: so I think we understand the direction from the Commission so just to summarize make sure we're all on the same page staff will continue to look at this issue and present back to the Commission additional research which would include all the things that were mentioned including environmental scan as you have said in terms of what the other jurisdictions are doing related to this and if there's any other applicable like you mentioned charities or some other groups that have dealt with this we'll include that information and we already have Mr. Norton signed up for a webinar just on cryptocurrency generally so that we can make sure we are understanding the technology as well

Commissioner Hayward: oh good good because I mean I know just enough to be pretty confused I mean you have to be go ahead

Commissioner Hatch: sorry to do this before I forget if you're not at a place where we will make an actual recommendation is to of course I'd like for you to indicate the things are probably not tolerable in other words helps to try to figure out whether or not we want to venture into this what we should be avoiding

Ms. Peth: so if there's something that's clear that you wouldn't recommend going in that particular direction at least indicate that so we can narrow okay and sorry just additional clarification ultimately it seems like this will be become potentially it become a regulation with the Commission I would assume so once we do the research we can come back get additional direction and then go back again and drop some sort of regulation

Commissioner Hayward: I think probably um I think it's unlikely that we will find that cryptocurrencies fit neatly into an existing category of in-kind contribution we might prejudge that but I think it's unlikely because of those differences that we've all been highlighting so sure

Ms. Peth: ok we will report back

Commissioner Hayward: awesome

Commissioner Cardenas: let me just mention apparently, the state of Oregon Oregon has some proposed proposed amendments to their campaign finance manual that would provide for the acceptance by by recipients of cryptocurrencies I don't know I think it's just been announced from what I'm reading so that might be another guidepost thank you

Commissioner Hayward: wonderful thank you very much

27. The Bagley-Keene Open Meeting Act, Proposed Questions for Attorney General

Opinion. Staff: John Feser, Senior Counsel, Legal Division. At the October 2017 Commission meeting, Deputies Attorney General Ted Prim and Julia Zuffelato presented an overview of the Bagley-Keene Open Meeting Act. At the January 2018 meeting, the Commission discussed the feasibility of soliciting an Attorney General's opinion to clarify some of the advice provided at the presentation. In accordance with the Commission's instructions at the January 2018 meeting, staff worked with interested Commissioners to prepare proposed questions for discussion at the February 2018 meeting. The Commission agreed on proposed questions and directed the Legal Division to prepare a legal analysis in accordance with requirements for requesting an AG Opinion. The Commission will identify appropriate questions for an AG Opinion in light of the Legal Division's legal analysis and determine whether to submit them in a formal request for an AG Opinion pursuant to Government Code section 12519.

Staff Memo

Commissioner Hayward: okay let's move on to item 27 which is the legal analysis regarding the Bagley Keene Act questions we had and might potentially submit to the Attorney General for an advisory opinion

Mr. Feser: Thank you Madame Chair this is John Feser and as you know prepared these questions initially I want to make a correction on question number 18 in the analysis it was simply an error and the short answer of the word yes should be no and I'll just say just sort of generally speaking a lot of these questions I believe are they're sort of frustrating set of laws to deal with Bagley Keene I think we all know that but just conclusory state this I would withdraw all but four six and seven from the request for AG's opinion or in the alternative not request an AG's opinion

Commissioner Hayward: okay would you like to elaborate

Commissioner Hatch: four six and seven did you say

Mr. Feser: I can elaborate on any analysis of the eighteen questions sure

Commissioner Hayward: no on your recommendation for why we move forward with some and not others

50:00 Mr. Feser: sure I think that the questions that I recommend being pulled are I think we don't require AG's opinion on those matters I think the areas are the three items that I would focus on are all the questions where you don't have case law you haven't had I mean we don't have case law in this area anyhow but I mean I think what we need is look in general we want to be proactive as a Commission we don't want to wait until something wrong happens and we violated Bagley Keene and then we deal with it after the fact the whole point of giving this to AG's office to get an opinion much like we have done when we had the compensation question back in the 70s the court is not going to hear it so you have to get it from somewhere some sort of analysis some sort of guidance and I think that's what the Commission was looking for interestingly I think over the past few months I think Bagley Keene has been front and center in the governments principles so I think we have sort of educated ourselves through that process and therefore pulling these questions that I think initially the process we had all these questions and through the process now we don't so much but if a few two or three are still questions that we have that we need clarification can't get it from the court and therefore asked attorney general's office then I suggest we do that

Commissioner Hatch: okay so is it fair to say on question one taken in numerical order that this is well settled in your mind or is it just that there's no case law on it

Mr. Feser: that one I think it's well settled

Commissioner Hatch: well settled ok and two is one that you would leave in you said

Mr. Feser: I'm sorry it would be four six and seven

Commissioner Hatch: oh so two is one you'd also drop

Mr. Feser: correct

Commissioner Hatch: is that the category of well settled? Its kind of a

Mr. Feser: well I mean this is one of the problems is that a lot of the questions are incomplete hypotheticals they could branch off in any number of things so for instance with this question its in a reply all the answer is it really depends on whether or not you're talking about something within the subject matter jurisdiction of the body so if you're talking about you know are we gonna have lunch or something like that that's one thing but if you're talking about the substance of bitcoin or something like that that's another so I think the line is drawn there and I think the Commission understands that now

Commissioner Hatch: to put a finer point on it if its an advocacy piece not necessarily giving information like I read an article in the LA Times about bitcoin so I copied everybody on it in case they missed it and I don't express any advocacy I don't think that there's anything wrong with that right

Mr. Feser: well if you're hearing discussing or deliberating those are the verbs

Commissioner Hatch: my example

Mr. Feser: if you're just stating

Commissioner Hatch: article I read have you seen it or even don't need to say have I seen it

Mr. Feser: and you're just sending it to all the Commissioners

Commissioner Hatch: right

Mr. Feser: if it's a matter you forward that's on the next agenda that could be a problem see this is the problem is the hypotheticals are incomplete we don't really know the circumstances and that's what the attorney general's office is going to say what about this what's happening here what are the circumstances surrounding this communication Bitcoin isn't even on our radar or we'd already make a regulation on it then it is probably not a problem but since its coming up then I think it would be that's a problem with hypotheticals

Commissioner Hatch: well if it was an opinion piece in LA Times then I get that but if it's just some news story about it and like all of us are trying to absorb whatever we can find about it and it seems like conveying news would not be violating Bagley Keene even if it's relevant to some future agenda item

Mr. Feser: sure I mean its hard to say because I mean there could be commentary within a given journalistic piece of writing and it could sway somebody one way or another on a given issue and therefore you're advocating in a certain way by showing that

Commissioner Hatch: knowledge that not at all news stories they're not slanted but they are presented as news I would rather have more information than less and I don't think that if its not advocating I don't think there's anything violated Bagley Keene I could be wrong tell me if I am

55:00 Mr. Lau: Well I would say I think it's highlighted in that (inaudible) report that we shared most government attorneys extended to even if you want to just call it best case or best practices its discussing any item that may or may not become known so forwarding an article knowing that bitcoin is on the radar and forwarding an article about bitcoin conservatively our recommendation would be yes that is discussing sending that article to the other four Commissioners or the other Commissioners would be and attempt to discuss an item that is clearly coming up or is going to be before the Commission in a short period so we would recommend against it

Commissioner Hayward: if I could just interject it's that that preference for conservative advice that I think is the one-way ratchet that is moving Bagley Keene compliance into areas where makes it very difficult for Commissioners to do their jobs and that's my concern so I think Mr. Feser's recommendation that we trim this down is is well-taken I felt like there was a lot of repetition we talked outside of the context of a meeting about this very thing and I'm not sure this is quite ready for primetime unless I hear objection from my colleagues lets maybe put this over for a meeting and look at what it looks like with just those three questions we might even want to redesign the questions a little bit so they don't have the incomplete hypothetical quality that Mr. Feser is concerned about then see what we have after we have the opportunity to do that because I because I know if I'm just looking at those three I probably have a different view how they ought to flow what common things you could incorporate Commissioner Cardenas are you how does that sound good alright so lets put that over for next meeting

28. Prenotice Discussion of Amendments to Regulation 18700.2 Staff: Brian Lau, Acting General Counsel and Sukhi Brar, Senior Counsel, Legal Division. At the October 2017 Commission meeting, Commissioner Hatch expressed interest in amending Regulation 18700.2 to better clarify when an official's interest in a business entity is also an interest in that business entity's parent, subsidiary or otherwise related business entity for purposes of the Act's conflicts of interest provisions. The amendments propose two exceptions to when an official has an interest in a parent or subsidiary of a business entity including when the subsidiary has not been listed on reports filed by the parent corporation with the SEC and when an official's ownership interest in the business entity is below a certain threshold.

Staff Memo

Commissioner Hayward: how are we doing on time does anybody need a comfort break or anything like that or should we just keep going forward going forward good perfect item number

28 is a pre-notice discussion regarding amendments to regulation 18700.2 regarding parent subsidiaries and otherwise related business entities if you basically if you already own something do you or you conflicted out of decisions involving something else because of parent subsidiary or other business relationship I think that was a pretty good summary and so

Ms. Brar: good morning vice Chair Hayward and Commissioners Sukhi Brar Senior counsel legal division Im here to present a pre-notice of regulation 18700.2 and Commissioner Hayward did a great job of summarizing that what I have just passed out to you today and this is also available at the table outside of the room it's the new version of our proposed regulation yesterday staff met with Commissioner Hatch and we got some productive feedback on the draft that we had and so I just want to point out the changes from the last draft to this one so im gonna work off of the old draft to point these out and they come on they start on page two starting with line five on page two the has been changed to that the word entity is added after business on line six the word optional is now removed along with the brackets so its no longer optional its actually in the proposed draft now and at the end of line seven we've added a semicolon and the word and on line nine at the end of that line or related business has been deleted and on line ten the first word entity has been removed so in effect what that does is for the exception in subparagraph D in order to qualify for that exception you'd have to meet both one and two and with that I'll open it up for pre-notice discussion on this draft

Commissioner Hayward: thank you very much Commissioner Hatch would you like the floor

Commissioner Hatch: ok I thank legal division for working closely with me to figure out a way to address this issue I'm very pleased with the product and I think it will go a long way to simplify the life of people who have to report this stuff on their form 700 so now we're nearly almost tens of thousands of people who have to file form 700 it's becoming an issue of general concern

Commissioner Hayward: Alright Commissioner Cardenas is there any public comment on this item alright so what's our next step

Ms. Brar: Our next step will be to notice this version of the draft hold an IP meeting and then have the Commission vote on a more finalized version of the draft at that point

Commissioner Hatch: This is a 45 day notice

Ms. Brar: Correct

Commissioner Hatch: Two months away

Ms. Brar: right

Commissioner Hayward: Perfect well done thank you very much

29. Approval of Interpretation of the Commission’s Compensation and Reimbursement Policy. Staff: Erin Peth, Executive Director, Loressa Hon, Chief of Administration and John Feser, Senior Counsel. On February 15, 2018, the Commission adopted a Compensation and Reimbursement Policy for members of the Commission. Subsequently, Commissioners have sought clarification on the policy, including what activities are compensable under the policy. The Commission will discuss and consider whether to approve or modify the policy as well and/or staff’s interpretation of the policy.

Staff Memo

Commissioner Hayward: alright item number 29 Commissioner compensation and reimbursement policy subject near and dear who is oh Loressa

Ms. Peth: Loressa and I are both available so as we all know that Commission adopted a compensation policy I believe at the February meeting and so subsequent to that we worked we have been working to get everyone on the same page how that is being interpreted so we’ve brought forth today on item 29 is essentially kind of an outline of the policy and how we see it being interpreted and then just to clarify also we posted we added a couple additional things and posted that in the regline version I think the day after the agenda was posted after some questions from Commissioner Hatch so we just wanted to be absolutely clear so we added for the first part of the policy that talks about Commission meeting days the policy itself clarifies that that would include committee meetings and Commission hearings so I added that just to make it abundantly clear and then in the part of the memo on the first page where we talk about what legal division has advised various Commissioners we added because it is accurate preparation for Commission meeting or committee meetings is also part of the official duties especially now that we obviously have the standing committees appointed under the governance principles we wanted to make sure that was clear so those were just the two additional things we added for clarity on the second page basically in the middle I’m asking for direction from the Commission as to whether the following things are included you would consider them essential to the functioning of the Commission because that’s the standard and those would be reviewing FPPC daily news clips answering press inquiries and preparing and submitting monthly timesheets and expense claims and so again as I stated in the memo especially with the absence of a Chair I just wanted to make sure that just take direction from the Commission for those items

Commissioner Hayward: excellent vice Chair is just not quite the same any discussion

Commissioner Hatch: so in the first group of absence of the Chair but these are ones you're recommending as a new role

Ms. Peth: yes in consultation with the legal division we believe that those are “essential to the functioning of the Commission”

Commissioner Hatch: and in the second group it's you're seeking our it's really not advice you're seeking a decision from us on the last three reviewing the ones you said in particular earlier as to the first one it's difficult for us to be well read without reading those most of those

1:05:00

clips some of them are not central but we're at a disadvantage for not reading them so I think it's appropriate the answering press inquiries is a little bit blurrier because this could also be categorized as self-promoting so I probably would not do that as one that should be included and preparing and submitting monthly timesheets and expense claims is what we are required to do so I think we should be it should be tracked at the time that's just my views the Chair

Commissioner Hayward: Commissioner Cardenas

Commissioner Cardenas: I believe that answering the press inquiry is as closer to the core of our function I would presume that a member of this Commission wouldn't go before the press for the the purpose of self-promotion but rather to to answer the hopefully legitimate questions about the on goings of this public institution so I would think that answering public media inquiries is sufficiently core to our responsibilities that if we are to be compensated it should be within the band work of things that would warrant compensation

Commissioner Hayward: and I guess my thought on that was I had a question mark next to it I've been ruminating on it a little bit more and it does help occasionally to clarify how the law works and how we work and of course we have personnel staff who does a very good job of that but to the extent if somebody wants to get a soundbite or a quote from a Commissioner it also doesn't seem to be something that would take a lot of time so you know if you spend a half hour with a reporter it's not gonna really break the budget where as some of the other things I do do take a lot of time going through the board book which is like the basic minimum you do to prepare for a meeting is a number of hours so so I guess I'd be in favor of the answering press inquiries if only to then not have a disincentive there to help our staff out when our staff wants Commissioners to provide information to members of the press now it's also one of those things where you know as a matter of internal policy somebody is abusing and we can look at that and set other parameters I think

Commissioner Hatch: I am a little bit soft on it I would like to see if we included that we perhaps put some other one that is not relevant to unsolicited press contacts would not be included in other words if I'm initiating the contact with the press which would certainly seem to be self-promotion in face that would not be something that's allowable

Ms. Peth: well I think the way it's phrased here if we keep that language answering press inquiries so I think that would almost be assuming that potentially Jay has reached out to one of you because a reporter has a request so I think and with that direction Commissioner Hatch we can just watch for that so that its more in response to the inquiry then self-promotion

Commissioner Hatch: if I was contacting several members of the press you know to try and plant a story or what not

Commissioner Hayward: and then you would bill that time and we would all know

Commissioner Hatch: yes because I am compulsive about

Commissioner Hayward: there's a transparency element to this I really like you know sure go ahead get your 12.50 an hour and let us know because it's all public record pretty much

Ms. Peth: and then one other thing I wanted you to know it's stated here but just for the record we will once this is adopted be updating the actual timesheets that the Commissioners submit because they we completely understand that at this point it's outdated and it would just it would help us all a lot it its updated so that you're filling out the information that you need to fill out should the vacancies on the Commission be filled we will also be able to have the new Commissioners everyone operating under the same understanding

Commissioner Hayward: we're all going to need to be retrained I know my time keeping practice until very recently was really incomplete because I wasn't sure and so you're not sure you don't do it and then I can go back and recreate looking at my email and stuff what I did on certain days but it's really it's been pretty wonky on my part can say for my colleague here that some people have no problem knowing how to code time keeping excellent track but me not so much having a new timesheet will be very helpful for me

1:10:00

Ms. Peth: it will obviously help staff too so we all want to make this as efficient as possible so people are spending less time on administrative duties and more time on policy

Commissioner Hayward: yep

Commissioner Hatch: I like that I had one additional question

Commissioner Hayward: Commissioner Hatch and then Commissioner Cardenas

Commissioner Hatch: Well I can

Commissioner Hayward: Commissioner Cardenas

Commissioner Cardenas: what direction are we providing with respect to timesheets and expense reports did we arrive at something what do we

Ms. Peth: I think my understanding is that those three items is that we were asking for direction would be included as compensatable if that's a word compensable yes thank you compensable time but I don't know I would prefer maybe if the Commission would vote so that we can just that this is ok the whole interpretation so that we just have it on the record and staff has a clear direction

Commissioner Cardenas: I personally think that making out timesheets is less core to our responsibilities but that's

Ms. Peth: well maybe it will be faster now

Commissioner Hatch: that would help

Commissioner Hayward: good

Commissioner Hatch: my question was on B Commission approval and you provided a clarification above about committee meetings but this item only talks about preparing for meetings or hearings of the Commission now I would take that to mean that then committee work would not be in under the 40 hour or part to the 40 hour count is that your interpretation or is it something you guys just missed

Ms. Peth: no that's something I think we would prefer to have clarification from the Commission on as well because just internally it could be viewed either way to the extent the committee's are basically the way the governments regulations work the committee's are cinch there's an argument that the committees are prepping for a Commission meeting because they're making recommendations you know establishing thoughts for the full Commission so I think that could go either way so I think that would be helpful for us to understand whether the Commission believes that the time for the committee meetings is "time preparing for the Commission meetings" so that if any hours over 40 would have to be approved by the Commission or if the Commission would like to give us the direction that the time spent on committee meetings is not part of that 40 hour calculation that needs to come back to you I think we don't necessarily have an overwhelming opinion about it we just would want clarification

Commissioner Hatch: for the sake of transparency I think it's helpful for us to to document which is which even if you still lump it for the 40 hour purpose because this is our maiden voyage with active committees and I think it would be helpful for you for this institution to know how that's affected how we do things now this time it takes do your work

Ms. Peth: no I appreciate that and I think when we redo the timesheet itself maybe it would be helpful to somehow have you know we haven't start working on yeah because they're waiting for this but I think some sort of segmentation on there where it's you know its clear this is you know this is reviewing agenda materials for the main Commission meeting and then maybe you know down here committee committee work meeting prep whatever so that we can kind of get that it would as to your point provide transparency as to how much time is being spent on the various activities

Commissioner Hatch: okay in the first line of the bullet point under B it says claim for compensation for preparing for meetings or hearings so you should probably put meetings comma oh I see you just say meetings ok I think its actually now that I think about

Ms. Peth: well that language is actually directly from the policy adopted by then Commission

Commissioner Hatch: for clarity's sake if you are going to lump them all then I would say after the word for second word for third word for meetings put in Commission or Commission or committee

1:15:00 Ms. Peth: ok

Commissioner Hatch: so that it's clear that you mean both

Commissioner Hayward: and that would also cover to the extent there's any ambiguity various ad hoc committees that we've had they're not standing committees but still do Commission work

Ms. Peth: so I want to just make sure were 100 percent clear so we would then bring back to the Commission any time sheets that are over 40 hours even if that included time working on committee work

Commissioner Hatch: right

Ms. Peth: ok thank you

Commissioner Hatch: but just to be clear so it's not ambiguous and we don't get another tiff about it then if it's appropriate I would make a motion to ratify this document in its entirety as edited here

Commissioner Hayward: that's motion

Commissioner Cardenas: second

Sasha: Commissioner Cardenas?

Commissioner Cardenas: yes

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye

Sasha: Commissioner Hayward?

Commissioner Hayward: yes

Sasha: the motion passes

Commissioner Hatch: One little special request on the expense claim could you find a place to put bus fare on there

Ms. Peth: sure

Commissioner Hatch: as a bus rider I always have to figure out a place to add

Commissioner Hayward: I always cross out airfare and put in train

Ms. Peth: maybe we should just put transportation

Commissioner Hatch: that would be a good idea

Ms. Peth: Commissioner Hayward you didn't take public comment on the last item I don't know if just for the record

Commissioner Hayward: certainly I don't believe I see anyone looking remotely like they want to stand up but thank you I've forgotten that more than once this morning and I need a cheat sheet to prevent that from happening

30. Approval of Commissioner Compensation Request. Staff: Erin Peth, Executive Director and Loressa Hon, Chief of Administration. Consideration of Commissioner's requests for compensation exceeding 40 hours in a calendar month as required by the Commission's Compensation and Reimbursement Policy.

Staff Memo

Ms. Peth: So item 30 is basically follow on from what we were just discussing these are I believe four different time sheets from Commissioner Hatch that are over 40 hours pursuant to the policy we're bringing that back to the Commission for approval

Commissioner Hayward: all right any discussion any questions

Commissioner Hatch: I'd be happy to answer any questions

Commissioner Hayward: I think it looks familiar in certain respects Commissioner Cardenas

Commissioner Cardenas: I have no questions

Commissioner Hayward: so do we take a vote on this

Commissioner Cardenas: move

Commissioner Hatch: second

Ms. Peth: sorry I was just clarifying I wanted to make sure that it was ok for Commissioner Hatch to vote on his compensation

Commissioner Hayward: oh well he's

Ms. Peth: it just occurred to me

Commissioner Hayward: we only got three people too

Ms. Peth: right I just want to make sure

Mr. Lau: within the conflict of interest regulations there is an exception for any action involving your compensation as long as not setting the compensation differently than other officials or appointing yourself for hiring or firing somebody so it is permissible under the act

Commissioner Hatch: thank you for your clarification

Commissioner Hayward: I believe there's a motion and a second can we take roll please

Sasha: Commissioner Cardenas?

Commissioner Cardenas: yes

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye

Sasha: Commissioner Hayward?

Commissioner Hayward: aye

Sasha: the motion passes

31. Commission Meeting in Location Other Than Sacramento. Staff: Erin Peth, Executive Director and Loressa Hon, Chief of Administration. The Commission will decide whether and when and where to hold a regular Commission meeting outside of Sacramento.

Staff Memo

Commissioner Hayward: ok moving on to item 31

Ms. Peth: so item 31 is brief in the memo but it wasn't that much to say Commissioner Hayward had requested that we explore the opportunity or the possibility of having a Commission meeting somewhere other than Sacramento and we thought Los Angeles could be a good alternative for both makeup of the Commission and also the number of people who then could possibly attended so we reached out to the Los Angeles Ethics Commission and they've agreed to help us find space in Los Angeles City Hall and so Loressa is working with their equivalent of Loressa it looks like the September meeting which is September 20th would be a possibility or could work and I think just from our Commission's standpoint that might be a good time just a little bit before the election I think the October meeting is a little bit harder just given staff resources so and at the same time September is far enough away that we have notice out to

everyone who might attend that we will be down there in September so if that's agreeable to the Commission we're happy to keep moving forward with that plan

Commissioner Hatch: it'd be great is there any chance we could add something to our agenda to make to make a presentation from the local LA Commission

1:20:00 Ms. Peth: yes but we can definitely ask them we can I know that they're one of the Commission's that just looked at their enforcement procedures so maybe that's something the executive director or the appropriate staff could present on since that's a timely topic for our Commission as well

Commissioner Hatch: that would be very helpful

Ms. Peth: So yeah we're happy to ask them

Commissioner Hatch: thank you

Commissioner Hayward: terrific

Commissioner Cardenas: Ms. Peth the so what we're hearing from the LA ethics Commission is that they're happy to help us find our location does that mean that they're not wherever their ethics Commission happens to just sit and meet that's not an option for us

Ms. Peth: I believe that they meet also in a room in City Hall I don't know sorry so I don't they don't have like we do here a hearing room is my understanding so I think whatever equivalent whatever kind of room they use we would also be using

Commissioner Cardenas: May I suggest the the Public Works board room on the third floor City Hall there's particularly gorgeous and this Commissioner has a deep affinity for that room

Ms. Peth: we will do our best

Commissioner Cardenas: it's absolutely gorgeous

Ms. Peth: thank you for that

Commissioner Hayward: it's nice to have an insider occasionally no we don't want to be in the basement

Ms. Peth: we will see what we can do

Commissioner Cardenas: I'm not saying that you know that these are not pleasant digs I'm just saying it's absolutely gorgeous

Ms. Peth: got it

Commissioner Hayward: terrific so staff just has instruction on that I don't think

Ms. Peth: I understand

Commissioner Hayward: I don't think there's any public comment from people in LA saying no stay where you are we don't want to see you nifty ok item number 32 is the law and policy committee meeting on legislation its your committee report

Commissioner Hatch: yes I've asked Phil to come up so we can kind of mutt and jeff this you know he has his item as well and if he wouldn't mind setting up each of these that we are recommending positions on and then I can make a motion

Mr. Lau: If I may before we start this it's approaching 11:30 and we were talking about maybe the closed session I suspect this might go quite longer than the if its just a suggestion

Commissioner Hayward: thank you Mr. Lau for pointing that out yeah maybe we should break and do our closed session and come back thank you very much for observing that I lost track I think also involves lunch

Public Meeting concluded at 11:21 am.

Public Meeting reconvened at 11:54 am.

32. Committee Reports

Law and Policy Committee Report
Budget and Personnel Committee Report

33. Legislative Update and Committee Recommendation for Commission Position on Legislation. Legislative and External Affairs. Phillip Ung, Director.

Staff Memo

Commissioner Hayward: it just PSA um we're going to power through the rest of the agenda and not stop again it will be useful for people to know that all the mice just went green all right we've back in open session taken care of item 35 on the agenda which was a closed session item involving a personnel matter and now we will head back into the open agenda with I guess combined presentation of 32 and 33 with the ledge update as well as the committee reports I will note before we get started with the law legislation stuff that the budget in personnel committee also met and we have a little one page report telling everyone that we met and that we organized we did not have an agenda we didn't do anything substantive it was very brief but we just got ourselves together so with that let's turn to the law policy committee report in the legislative update

Commissioner Hatch: Phil you want to set it up the first item

1:25:00

Mr. Ung: sure sorry about the awkwardness of this is the first time we've run through one of these policy committee report outs as well as the staff report in conjunction so I'm just goanna figure out where to put this mike first and then run through the long policy list based on the report out and update where the bills are based on the law and policy discussion because there's been quite a lot of movement on those bills since the committee met on June 8th this is Philip Ung legislative director for the Commission for assembly bill 664 which is a bill numbered one on the law and policy committee report out the authors took the amendments that the the policy committee recommended and then it was passed out of the Senate elections committee and on to appropriations and so at this time staff believes the conditions that were set for oppose unless amended position have been met and so it may be appropriate for the Commission to to change that position to just a neutral

Commissioner Hatch: I concur so as committee Chair I would move we remove the contingencies for item one AB 664 so that it would be oh I'm sorry we remove our opposition to AB 664

Mr. Ung: And we would be going neutral right

Commissioner Hatch: it would be no position

Mr. Ung: no position yeah ok

Commissioner Hayward: alright do we want a formal motion

Commissioner Hatch: this is to recommend to the Commission

Commissioner Hayward: ok is that your motion

Commissioner Hatch: that's my motion that we

Commissioner Hayward: do I hear a second

Commissioner Hatch: that we remove our opposed position on AB 664

Commissioner Cardenas: I'm prepared to second I do have a question which is kind of a maybe a guiding principle type of question

Commissioner Hatch: sure

Commissioner Cardenas: how what's the criteria for the taking of a position on a bill why no position vs. oppose or support is there some type of criteria because its in furtherance of the act or what

Commissioner Hatch: the particular case the Commission itself had taken a position at the last meeting of oppose unless amended with some criteria to be met we Phil communicated the conditions and I think I even this particular one I had additional concern that I intended if necessary to take back to the Commission as a recommendation but it didn't become necessary because the author voluntarily put the changes into a bill into his bill and amended it from the legislative process and as Phil said has been moved out of that committee in that form so they've met the actual Commissions conditions from the last meeting as well as the additional suggestion so does that answer your question

Commissioner Cardenas: yes it's an answer are there criteria that the committee is going to follow in determining whether or not finds favor with a particular proposed piece of legislation or is it going to be on a case-by-case

Commissioner Hatch: I think it's a fair point to raise we backed into this one as I said because the Commission already taken a position but I have been working with Phil on trying to develop a set of criteria to follow in developing recommendations on bills and as a matter of fact I think in our governance regulation there's a requirement that we develop excuse me the budget and personnel committee develop criteria for us to follow relative to the bills that affect the financial wellbeing of the Commission so in the spirit of that I'm doing separate one to bring back to the Commission for adoption once we figure out what works and what doesn't work that could be followed in the future committee meetings to appoint relative to public access that committee hearing that we held was done with a listen only mode for any member of the public that wanted to hear and I think we had a count double digit of is that not right

1:30:00

Sasha: I think we had an unofficial number of 11

Commissioner Hatch: just barely double digits nonetheless we've had Commission day when there was less people than that on the video so does that get to or am I missing

Commissioner Cardenas: no that's helpful

Commissioner Hatch: ok

Mr. Ung: and Philip Ung legislative director just to add on to what Commissioner Hatch has said that the document that we have been working on is really a process for how long policy will be reviewing bills and communicating with authors and sponsors as far as think what I'm understanding from Commissioner Cardenas is there are the bright lines in regards to policy right is if a bill doesn't follow the purpose do we automatically take an opposed or recommend and oppose and to answer that I think it's really it has been case-by-case I think there there are some bills that based on the author's description of it does further disclosure and transparency but we have opposed in the past there are some bills that could possibly further the purposes or not further the purposes of the act that we have supported or opposed it's really I think the Commission hasn't said any bright lines I think they've approached each bowl with a fresh look as to what the policy is in the effect on the act

Commissioner Cardenas: I do second to what was moved

Sasha: Commissioner Cardenas?

Ms. Peth: Oh wait we need to take public comment or offer a public comment

Commissioner Hayward: Public comment is there public comment

Commissioner Cardenas: And respectfully decline

Commissioner Hayward: he's nodding loudly alright Sasha if you could please take the roll

Sasha: Commissioner Cardenas?

Commissioner Cardenas: yes

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye

Sasha: Commissioner Hayward?

Commissioner Hayward: aye

Sasha: the motion passes

Mr. Ung: if I may madame vice Chair can I

Commissioner Hayward: please do

Mr. Ung: bill AB 2155 the Mr. Mullen the committee did recommend specific amendments that the staff had drafted the there was an alternative version that Commissioner Hatch had discussed with the sponsors of the bill and that was those were the amendments that we have now been in print with 2155 and so at this time I would just hand it over to Commissioner Hatch on how we'd like to discuss that

Commissioner Hatch: right the author's office and sponsor had expressed their concern that these specific section designations relative to the operation of the limits on that you call it thresholds are scattered about into the code and they would be difficult in future years to amend so I had suggested well if it's important to you they want to consider sending that provision out in a separate section without changing the meaning of what you're doing so that then in the future years you just amend one small section and have the same effect and they seem to like it and so the language was drafted and certainly it meets what I had seen as still meeting it's both the clear intention of the Commission when they did their support if amended I would move that AB 2155 we change our position from support if amended to support

Commissioner Hayward: okay I have questions on this one

Commissioner Hatch: okay

Commissioner Hayward: because I'm not clear I understand at this point where we are able to promulgate thresholds if we feel they're appropriate and where we're not

Commissioner Hatch: I'd be happy to answer that the draft of the bill that was before the full Commission had said that any limits or I should say that limits are thresholds in the entire chapter four would be would be prevented

Commissioner Hayward: understood yes

1:35:00 Commissioner Hayward: and so Phil Ung picked up on that and it should be narrowed just to the things that AB 249 had done and so this was the language that was requested was to narrow it to specific sections

Commissioner Hayward: Any of the disclose act disclaimer requirements thresholds we're not at liberty to set thresholds why is that so hard to say but there are other places in the act were if we felt thresholds were appropriate because we had some sort didn't in the standard because we didn't want to catch small fish in the big ocean and that kind of thing and I see someone nodding and that's I just want that to be said out loud because it wasn't evident to me from the description what had happened and that's what happened that's what we all intended to happen

Mr. Ung: and the sections that I called out now in the bill do include the advertising areas that were subject of discussion when we were adopting the regulation had the threshold but it also includes sections that don't have thresholds or imply thresholds in them I think the sponsor really just and he's here so he can discuss that during public comment doesn't want us to set any quantity thresholds on anything related to this act he really wants the legislature to be in charge of setting those thresholds

Commissioner Hayward: But to the extent this other threshold type thing in other parts of title four

Mr. Ung: Chapter four

Commissioner Hayward: Chapter four I knew as soon as I said that that sounded wrong excellent Commissioner Cardenas public comment

Mr. Lange: Trent Lange president of California clean money campaign sponsor of AB 2155 really appreciate the staff having pointed out that the previous version had gone a little bit further in terms of the quantity issue than than we thought for the Commission to bring that up and support with the amended I think we have come to a conclusion that works very well for our

goals to make sure that the quantity threshold are the same as the legislature intended we believe in AB249 and that makes it clear in the code so we would definitely be happy to receive the Commission's support now that this has been addressed I'm happy to ask answer any questions

Commissioner Hayward: Any questions?

Commissioner Hatch: No questions for me.

Commissioner Hayward: Questions? Yeah I'll just admit that I am kind of a fan of thresholds and I lost that vote and it may be that someday if somebody wants to unwind this it will be more difficult because it is in the statute that it's your bill not mine so here we go so. All right so let's get a motion to change our position from support if amended to support

Commissioner Hatch: Yes I so move

Commissioner Cardenas: Second.

Commissioner Hayward: All right.

Ms. Linker: Commissioner Cardenas

Commissioner Cardenas: Yes

Ms. Linker: Commissioner Hatch

Commissioner Hatch: Aye

Ms. Linker: Commissioner Hayward

Commissioner Hayward: Aye

Ms. Linker: The motion passes

Mr. Ung: The next bill that the committee discussed was assembly bill 2880 by mr. harper regarding local enforcement. at the main meeting the Commission had recommended three specific amendments that they'd like to see made to the bill. After discussions with the sponsor. The committee recommends a recommended a new set of modified amendments since that discussion, since the committee recommended those amendments to the Commission the author and the sponsor have taken those amendments verbatim they are now on print, that bill has moved out of the senate elections committee on a consent vote and is now on a senate appropriations and so I will hand it over to Commissioner Hatch but I think it warrants a change in position

Commissioner Hatch: Thank you Mr. Ung. The we had a little bit of back and forth on some of the details of it that ultimately were resolved in favor of what the original Commissions

conditions were just said in different ways sometimes it is about or about form, then steps, but we got there and I would highly recommend that we change our position to support. if you wanna ask for public input I'll wait on my motion

Commissioner Hayward: Any public comment?

1:40:00

Mr. Lange: Trent Lange, president of California Clean Money Campaign. We're not the sponsor of the bill but we're supporter of the bill and on behalf of the sponsor, California Common Cause, we'd like to thank the Commission for its suggestions they believe that they had done this and would like to ask for your support as would as would we and I'll just also add that we really appreciate working on both this bill and the other bill with the law and policy committee, that was a very good process and we appreciate the involvement thank you.

Commissioner Hayward: I have one quick question I think before we get to a vote. Do we have a feeling for how many jurisdiction would want to take advantage of this? Does the author's office been contacted?

Mr. Ung: Go ahead Erin.

Ms. Peth: Well I don't know Philip if there's something different. I don't I we have contracts currently with one city and one county. Versions of this bill have circulated in the past few years that would allow us to contract any of the jurisdictions an di think there there have just been concerns raised about whether there would just be a flood of jurisdictions coming through. But, that doesn't seem to be likely? It's just one example is we actually have authorization to contract with the city of Stockton that was put in by that area's representatives and we have you know never been approached about actually exceeding a contract. So that's just an example of where even there where we have the authorization we haven't been approached by that. And I think you know the ability in the bill for us to obviously consider each each jurisdiction on as they come in because obviously there could be if there was a flood of request we might not be able to accommodate that so you know I don't have a great answer about that but it doesn't seem like everyone will be knocking down our door the day after it passed.

Mr. Ung: I would add, I would never disagree with Erin but I would add that I have been contacted by two individual jurisdictions who were just curious about how these jurisdictions had these arrangement done and how they could get the same arrangements. It was west Sacramento and then the city of santa monica right after that what is it the hotel got, the huntly hotel case they they were very interested in that. But once I informed them that they essentially needed to get legislative authorization I haven't heard from them since but if this bill is adopted into law we'll see if they contact us again

Commissioner Hayward: Okay good thank you, motion?

Commissioner Hatch: Madame Chair, I'd move to we change our position from support as amended to support for AB2880

Commissioner Hayward: Do I hear a second?

Commissioner Cardenas: Second

Ms. Linker: Commissioner Cardenas

Commissioner Cardenas: Yes

Ms. Linker: Commissioner Hatch

Commissioner Hatch: Aye

Ms. Linker: Commissioner Hayward

Commissioner Hayward: Aye

Ms. Linker: The motion passes

Mr. Ung: and the last bill that was discussed by the law and policy committee was senate bill 1239 the committee recommended a handful of changes to the bill but did not recommend a change in our position since that discussion as you hopefully saw on public comment how Wagner, who works as a retired annuitant for the sector State's office responded to the three concerns and so the it's mostly just a discussion our position doesn't change at all but they have the least responded to the recommendations of the committee

Commissioner Hatch: I want might add one other thing there was a recommendation that we delegate limited authority to the executive director for one time basis to change the positions on these three bills if this went beyond the date of this Commission meeting so that having not been necessary there's no recommendation to make on that. I would say though they discussed with the general council about working on developing a durable sort of power of attorney if you will limited power of attorney that could be used in future cases where we run out of time on the calendar so that if the conditions are met in between meetings and both the website director and the general counsel believes that the contingencies have been met then the general excuse me they got too many acronyms here our executive director would then be in power to make the change without waiting for a subsequent meeting that will bring that back as a recommendation of a future agenda

1:45:00

Commissioner Hayward: Okay, excellent

Commissioner Cardenas: that was conditioned on both alleged director and general counsel concurring

Commissioner Hatch: yes

Mr. Ung: Vice Chair Hayward did you want me to go through the rest of my legislative report at this time?

Commissioner Hayward: I think this is a good time to do that yes

Mr. Ung: Okay

Commissioner Hayward: While we're talking legislation absolutely

Mr. Ung: On the active bills for assembly bill 2188 that deals with online disclosure and on social media specifically that bill has been approved by the Senate Elections Committee and is on its way to appropriations my understanding is from the sponsor in his testimony at the committee that there are still amendments to be worked out with various stakeholders on that bill and so we will see hopefully amendments to that bill in the near future

Commissioner Hatch: question

Commissioner Hayward: yeah I have a question

Mr. Ung: Okay

Commissioner Hayward: What does this bill do? I mean

Mr. Ung: A lot I'm sorry that was a little yes but

Commissioner Hayward: in words I can understand

Mr. Ung: right well the bill it sets up new disclosure requirements specifically for online platforms that are different and separate and apart from the disclose act but complementary to the disclose act it includes putting certain disclaimers on header photos, landing pages requiring certain lengths I and all of that is I think understandable I think the issue that the legislators trying to wrap its mind around is the definition of online platform which in this case is I believe from the testimony yesterday Senate hearing or was it yesterday or Tuesday Senate hearing. the Broadcasters Association and the newspaper publishers believe it's it's very broad and it captures more folks in social media it captures newspapers and their websites and it captures on broadcasters and their websites and it also requires that each online platform create a publicly accessible database in which almost like the public file that is kept at television stations that is required by the FCC but each platform will create one online that anybody could access and see the record of ads and all of this would be going to the act and so we'd have some new responsibilities

Commissioner Hatch: So that class we're really talking about web pages so right not as opposed to like social media like what does it LinkedIn what's that one my wife does all the time

Commissioner Hayward: Facebook?

Mr. Ung: Snapchat? Instagram?

Commissioner Hatch: Facebook

Mr. Ung: Well all of those platforms I believe are it's what it's aimed at there's Facebook Instagram Twitter snapchat

Commissioner Hatch: as well as web pages

Mr. Ung: as well as others well I think that

Commissioner Hatch: Website I should say

Mr. Ung: Right and I think that's the controversy versus where do you draw the line in regards to what website are included and what aren't

Commissioner Hatch: Right

Mr. Ung: Right now its defines online platforms as essentially any any platform that sells ads directly to the advertiser which as you can imagine is pretty broad

Commissioner Hatch: That's where the newspapers because they have their own online edition with ads everywhere

Mr. Ung: That's right

Commissioner Hatch: Pop up in your face and yeah

Mr. Ung: And so that's where they're hoping to see that narrowed, how they would narrow that is is yet to be seen but hopefully they can hopefully find a definition that really narrows it but it's also the internet so any line you draw I'm sure gets blurred pretty quickly

Commissioner Hayward: well I'm having problems with you know conflicting or layers of you know, if you're this and this too do you have to have two disclaimers or can we craft a disclaimer that contains both things in it and you know when you start, parceling out different kinds of speech and having different requirements for them it seems like you get into compliance questions like that where you're not really the public square isn't getting much more information it's just a challenge to comply with whatever you're supposed to say but I'll leave that for a minute for now I probably should just read the bill

Commissioner Hatch: so parts of this makes specific reference to socially but others talk about the online platforms so I was sort of given the impression there were two distinct mediums of communication that would be treated separately or they are basically treated the same in this bill I'm talking about

1:50:00

Mr. Ung: From it's it's hard to tell the language in the bill kind of shifts back and forth it talks about social media in some areas and then it makes references to the online platform and so it's if the bill was to be approved in its current form I think we the division would have its work cut out for itself to try to interpret what provisions are captured under social media and what are captured under internet platform or

Commissioner Hatch: I think the as I remember now though the social media stuff is like if it doesn't fit in the social media then it can be put on an online platform like a redirection to that is that not true or

Mr. Ung: Yeah there if if trying the try to explain a technology in a way that even I understand it for example Google has Google has its ad system where you buy ads through Google but as you travel through the internet you're seeing ads provided by Google not by that specific they follow you and so the the website that is displaying those Google ads isn't responsible for creating a database Google would be responsible for creating the database because they are the ones in which the ads are being purchased

Commissioner Hatch: so that's where the platform they were typically talking about that google placement is a platform as opposed to the web page itself that

Mr. Ung: That's right

Commissioner Hatch: Ok I think I got a better understanding thank you

Mr. Ung: Took me a while to understand it too it's it's good it's a good nice challenging goal to understand

Commissioner Hatch: I'm sure I see the sponsor here maybe she he could lead some

Commissioner Hayward: Is the sponsor interested in talking about 2188

Mr. Lange: Yes as Phil pointed out we're still working on possible amendments with stakeholders specifically clarifications about online platform versus social media the general intent of the bill to address your question is AB8249 required electronic media ads to have this who funding this ad link and then that would go to a website that would have the top three funder information the challenge is that on Facebook and Twitter as examples there's just no way for the community to comply. you can't put a hoof unto this ad link in your in your tweet so Facebook and Twitter have actually rolled out frequently that on political ads nationwide they're requiring a link that has paid for by information so we're essentially tying in with that but bringing in the additional AB249 the disclosure rules so they have to include when they go to a page for more information that they have to have the AB249 requirements the top three funders etc so that's that's the point there Phil described it right about the Google Ads being another kind of example because those are the ones that are posted on website so it would again be platforms the one that's actually selling the ads that would be responsible. we do have the broadcasters in the

newspaper association have that thought up this question that okay well we actually sell ads directly to people some in some places so we're trying to iron out where those would be the intent though in general is let AB249 do it when the committee itself can put the who funded this ad link on which they can in a lot of cases would then require the platform with a social media platform to do it when they are not, when the community doesn't have that capability that's the intent there

Commissioner Hayward: ok

Mr. Lange: but otherwise happy to answer any questions

Commissioner Hatch: yeah one question that's troubled me a lot of the stuff that happened in the national elections with social media were not actually paid ads they were people registering with fake identities and then expressing opinions freely without having to pay you know an advertising fee but is that beyond our reach to regulate

1:55:00

Mr. Lange: Yes well it's its beyond the reach of the attempted reach of this bill. The actually the what Facebook and Twitter is rolling out I understand that YouTube and others are also rolling out as some of the other big ones are rolling out as well they actually capture more because they'll require their little paid for by on in any even issue ad or things on candidate or things mentioned like that whereas AB 249 and AB 2188 by extension are narrowly focused on advertisements per the definition 84501 so with the expressed support or opposition so it wouldn't address those issues but at least would address to make sure that with California advertisements that people would be able to easily find the top 3 funder information

Commissioner Hatch: It may be that it's beyond our power to even

Mr. Lange: I think the legislature could do so we had a previous version of the disclose Act that would have extended it to election hearing communications that name or depict candidates within you know sixty days of the election to extend advertisements to include those the previous versions was SB52 would have also extended the definition of advertisements to include issue advertisements that you know tell people to call their legislature to support or oppose a bill for instance so it's clearly within the legislature's purview to do that they just not have they just have not done so yet it's not on the table this year I'll put it that way

Commissioner Hatch: Thank you

Commissioner Hayward: Well importantly your Facebook can do set requirements the governments can't because the First Amendment and all the campaign finance interpretations of things like you know express advocacy and issue advocacy having to be in functional equivalent of Express advocacy and stuff like that so Facebook being private so

Mr. Lange: exactly

Commissioner Hatch: so if you want to take our rights away have a private company do it that's certainly the message

Commissioner Hayward: this Congress shall make no law not Facebook shall make no law. Alright

Commissioner Hatch: Thank you

Commissioner Hayward: Moving right along

Commissioner Hatch: Do you have another bill Phil?

Mr. Ung: The next bill was 2689 by Somner Gray that bill continues to move through the process it passed the Senate unanimously and it is on its way to appropriations the we added a miscellaneous bill this at this meeting that dealt with the Bagley-Keene act because this Commission was particularly interested in any

Commissioner Hatch: Before you read item 6

Mr. Ung: Sorry about that

Commissioner Hatch: Recall I made a motion on this bill the last hearing true which failed is that not true

Mr. Ung: I believe it did yes it was yes it was a 2:2 vote with one abstention

Commissioner Hatch: yeah okay thank you sorry to interrupt

Mr. Ung: that's okay AB2958 is a change to the Bagley Keene act we wanna with in consultation with legal division we added this just to inform the Commission that there was this change to advisory boards, Advisory Commission, advisory committees and there teleconferencing I don't believe we fall under that because this deals with the committee's that are three or more which will be a quorum for us

Commissioner Hatch: So if our committees were three or five which would be the whole Commission

Mr. Ung: It'd just be a Commission yeah

Commissioner Hatch: we were bigger Commission it would apply to us

Mr. Ung: yes so this so this is more of an FYI to

Commissioner Hayward: well this applies to to advisory committees I don't think

Mr. Ung: We're not

Commissioner Hayward: We're not one of those because we have rule-making authority

Commissioner Hatch: Well what are well are committees are advisory but it's composed of Commissioners

Commissioner Hayward: Oh you're talking about our standing committees

Mr. Ung: Committees yes

Commissioner Hayward: I thought he was talking about the Commission as a thing

Mr. Ung: there's no action on this this is just too inform you of updates to the Bagley Keene act because of your interest in that body of law and the last one is on the budget bill that was approved last week the governor has yet to sign it any questions on the budget I would refer to Ms. Peth on that and that's the end of my legislative comments

Commissioner Hatch: well you said that governor did sign this

Mr. Ung: he did not he has not signed it yet

Commissioner Hatch: well he is not

Mr. Ung: no

Commissioner Hatch: he hasn't vetoed it yet it just you know now I noticed you dropped the other one is that because they stopped acting on it or?

Mr. Ung: It just wasn't the main budget bill that the conference committee put all this language into so

Commissioner Hatch: So we don't have any house differences now

Mr. Ung: No

Commissioner Hatch: Okay

Mr. Ung: No sir

Commissioner Cardenas: May I ask in connection with the SBA40 these provisions which appear to be reporting requirements to what extent are these new obligations to be fulfilled

Ms. Peth: so it is it is a new requirement for reporting back to the legislature but we have been collecting most of that information so it will be a new requirement but we do basically have the data that we need to report back

Commissioner Cardenas: thank you

Commissioner Hayward: further comments?

2:00:00 Commissioner Hatch: I think that concludes our reports

34. Request from Member of the Public to Sponsor Legislation. Bob Stern has requested that the Commission consider sponsoring legislation this year to make the Chair position part-time starting January 2019. Commissioner Hatch asked that the request be considered by the full Commission.

Email From Bob Stern

Commissioner Hayward: all right now moving on to item 34 a suggestion by a august member of the public Mr. Bob Stern a potential legislation we might entertain related to the FPPC Chair the FPPC Chair being part time not full time so I'll turn the floor over Mr. Stern and he can tell us what he thinks

Mr. Stern: My name is Bob Stern, I was the principal coauthor of the political reform act back in 1974 in fact the night it passed I turned to Dan Lowenstein I said Dan will this be the highlight of my professional career at age 30 and he said I don't know and that was the highlight of my professional career at age 30 it's all been downhill since. The I was your first general counsel for 9 years I was your legislative director I was your acting enforcement director at times I was your press spokesperson at time I served with the with three Chairs 1983 I moved to Los Angeles and became president for the center of governmental studies which is a non-profit group which proposed legislation and reports on the initiative process, campaign financing, term limits and other governmental issues. 6 years ago I retired I now teach 100 adults at UCLA extension in Santa Monica in Maridis so I'm keeping busy doing that I rarely get to Sacramento and even rarer get to hear before you so it's a pleasure to be here. I clearly made a mistake when drafting the political reform act when Dan Lowenstein who was the chief drafter and I worked together on the measure, he insisted that the Chair of FPPC be full time while the other four Commissioners be part time members. I resisted saying that no other Commission had such a structure and the Chair would be given too much power. He acknowledged the uniqueness of the structure but said that the Chair not an executive director hired by the entire Commission should run the staff and Dan's arguments prevailed. Since the beginning, part time Commissioner has chafed at this in fact even before the first meeting of the Commission, Dan Lowenstein issued a press statement saying the era of lobbyists wining and dining legislators was now over since we had put in a provision saying that lobbyists could not spend more than 10 dollars a month per legislator as Jerry Brown said that was enough for two hamburgers and a Coke and Dan said issued this press release and one of the part time Commissioners Jerry Waldie who was a former congressman objected that the Chair was putting out the statement without consulting with the

2:05:00

other Commissioners. During the term of Tom Houston, who was the second Chair, I received phone calls from part time Commissioners complaining they were not being kept in the loop and with being surprised at some of the actions being taken between Commission meetings by the staff and by the Chair and I tried probably unsuccessfully to keep them part time Commissioners informed as to the everyday activities being taken by the staff but they were very upset in terms of with the fact of the Chair was doing things, working with the staff, making recommendation and hey why is it not coming before the Commission. I now agree with my original argument that this Chair should be part-time not full time to this day no other ethics agency has a structure like the FPPC all other state and local agencies either have one Commissioner, a full time Commissioner, or all part time Commissioners or in the case of the FCC, FEC federal elections Commission, all full time members. In fact, when I drafted the structure for the LA ethic Commission in 1990 working with the city council, I ensured that there was not a full-time Chair and I put it that there be five part time Commissioners and that's the way the structure of the LA ethics Commission has has been. I think one of the biggest problems of the current California structure is that the full time Chair who is appointed for one 4 year term with no reappointment allowed, almost always replaces the executive director and sometimes the general counsel and then brings in his or her personnel. This cut and causes a disruption every 4 years and removes much of the institutional memory of the Commission. In addition, the Chair in my experience acts almost like another staff person, attending staff meetings on legislation, regulations, and even enforcement actions that will not be administrative actions but other lawsuits filed by the Commission. Of course the Chair is the boss and has unequal ability to influence what the staff does and what it presents to the Commission, the legislator and the public. As we've seen recently, and in the past, part time Commissioner feel left out much of the ongoing operations of the Commission. I applaud the regulations you had adopted the last meeting I agree with those regulations. So my proposal is that the Commission should self-sponsor legislation, making all Commissioner part time, in addition, all Commissioners should have a cost of living raise in their daily stipend. It has not been increased since 1975, another mistake I made sorry about that. Although I must say, I am proud of one provision we put it that is unlike other initiatives to that point, we put in a provision into our initiative saying the legislator could amend the initiative without going back to the vote of the people and we were some of the first initiatives to do that and the legislators responded pretty well, over the past years. The legislation I am now proposing should be enacted this year so that next year's Chair who must be appointed by the new governor on or after February 1st of next year will be part-time like all the other Commissioners. Now there's been a suggestion that also the proposal should increase in size to seven members, so that when you have your committees the Chair can serve on the committees and one wouldn't be a problem and I wouldn't be against that in my opinion it's an interesting idea but if that were the case I would also suggest that the two appointing powers be from the statewide officers such as the Treasurer, the insurance Commissioner, superintendent of public instruction, and not by the legislator. The legislator now has no appointing power and also does not confirm members of the Commission as you know. I think it's time that the FPPC join all the other ethics and campaign finance Commissions that have a Commissioner that are all equal in status so I urge that you support legislation to make the Chair part time and also increase your stipend to maybe 4 to 500 dollars per meetings. Thanks so much for listening.

Commissioner Hayward: Question for Mr. Stern?

Commissioner Hatch: Question I didn't hear Bagley-Keene come out of your mouth.

Mr. Stern: I try to avoid those as much as possible

Commissioner Hatch: Yeah, it seemed like in bumping our heads against the wall here the last several months it seemed to jump up a lot and it seemed to be part of the reason why the Chair did a lot of things without communication with the rest of the Commission and its but led us to this reform that we recently passed in this part-time role do you see that duties or powers of the Chair change in the context or do you see them not immaterial to your proposal

Mr. Stern: No I clearly I mean the Chair will not be here all the time, will not be interacting with the staff, will not be making suggestions to the staff, will not be attending the staff meetings, at least in my experience that they did. I mean when I was here and this was a long time ago things probably have changed, but the Chair was very much part of all the staff meetings, of all the discussions going on, and there is just a whole different dynamic when you're when you're full time and you're with the staff you're not removing yourself, you're at least I hope you're getting involved and earning your keep but seems to me that the system needs to be changed as I said no other Commission throughout the country has a situation like the FPPC as so I think it's time that the Commission be the same as other Commissions.

Commissioner Hayward: Commissioner Cardenas?

2:10:00

Commissioner Cardenas: This is my sixth month on the Commission, I do not I do not yet feel that I have been convinced that I know I have not yet been convinced that it is sufficiently broken, that I need to be complicit in a move to overtake and undue the will of the people as expressed by 70 percent of the vote in 1974. The legislature has the constitutional power to do that and there is a supermajority provision in which it may do and it may will do that. But, I'm not in a position this month to to provide political cover to legislators to do that

Mr. Stern: Well I respect your position and I understand it. I don't think you'll be overturning the will of the people, again initiative says that the legislature may amend the act and traditionally the Commission has made recommendation on how to improve the act and when I when I was here, we had several very aggressive legislative programs that we suggested to legislators dealing with personal use of campaign funds, dealing with disqualification when receiving campaign contributions, when you're a non-elect official and so forth so we weren't overturning the will of the people but we were improving the act and the real question is does this improve the act? And I think it does

Commissioner Cardenas: I respect your opinion and those of my colleagues as I do my own which is contrary

Mr. Stern: sure

Commissioner Cardenas: at least so far

Mr. Stern: okay

Commissioner Cardenas: you know it was mentioned before that our new committee structure was designed, at least in part, to deal with perceived and or actual abuses in the recent past and that this new structure, this is our maiden voyage. And, given that it is our brand new maiden voyage, we have just left harbor. It is not clear to me that we need to necessarily change course.

Mr. Stern: see, I think the timing is exactly right to do it now as opposed to waiting. I think you're going to have a difficult time doing it next year when there is a full time Chair appointed. So, without a full time Chair being here right now, but also with that fact that a new Chair has to come in February 1st. The timing, if you're all interested, this would be perfect timing to do it because then, the person that is appointed in February, will know their status. Once they're appointed in February, maybe your convinced next year, for example, then you have a full time Chair. I'm not sure you want to say to the full time Chair I'm sorry, you're no longer going to be the full time Chair, you're going to be the part time Chair. The person has maybe moved to Sacramento, has uprooted their business and so forth, so it's a whole different concept and that's why I think its important to be considered today.

Commissioner Cardenas: I understand, I am not as concerned with the ease and facility of making the move as I am with the very merits of making a move and then the absence of more experience with the structure I am not prepared to do that. That may be a catch twenty-two from the perspective of the ease of getting it done that's that's just it's it's it's that's gonna have to be in the absence of three votes to to do and it's that's being that's being suggested here I don't know to what extent perceived in real problems at least in the six months that I've been here are attributable to personal dynamics that were specific to individuals who are no longer sitting up here I understand that that structurally it can it can predispose individuals to a particular perspective. I am part time, we are part time that one person is full-time there are also ways for the Commission, short of of legislative change and in short of this Commission asking for legislative change to rectify perceived and actual abuses of power we have just taken a significant step to do that which has which has probably played no small role in the demolition at least numerically of this particular Commission at this time and and I agreed with hesitation and and considerable conSternation but I agreed that the new that the new structure was worth a go and I still think it's worth a go and we it hasn't even barely gotten to go yet and the concern about the ease with which this can be done in a different context is that's not way up in my list I'm concerned with the merits and I personally don't I have not yet experienced a body of evidence to suggest to me that on the merits that this Commission needs to take that position the legislature and its wisdom may, but I'm not prepared today to to suggest to it that that that this is a this is a missing piece of their inherent wisdom

2:15:00

Commissioner Hayward: I've got a couple of questions. Do you have the sense that there's any enthusiasm in the legislature for carrying such a bill?

Mr. Stern: I haven't approached any members of the legislature about it.

Commissioner Hayward: okay. I don't know how else to ask this, does anybody else like this idea?

Mr. Stern: my idea?

Commissioner Hayward: yeah. I mean you wrote an editorial about it, im sure you got some feedback

Mr. Stern: yeah, we got some feedback. The feedback I got from former staff members was yes, from former part time Commissioners was yes, from former full time Commissioners, don't do this. Full time Commissioners were very much against this and the part time Commissioners were for it.

Commissioner Hayward: Well that's, you know. As you know when we wrote our governance reform we did a lot of research and spoke with you among other people, and we found that too. Part-time Commissioners felt left out and weren't quite sure they saw a way to change that and full-time Chairs were like oh of course I was communicating with the part-time Chairs of course the part-time Commissioners they were in the loop nobody complained to me. Well you know, maybe, maybe not, but maybe didn't hear it. Interesting. so what's the thinking behind increasing the Commissioners to seven

Mr. Stern: the thinking there was, when you set up your committees, basically the question there is whether the Chair can be a member of the committees and this would allow the Chair to be a member of the committees. So you can have three people as opposed to

Commissioner Hayward: yeah because now the magic number is

Mr. Stern: is two

Commissioner Hayward two, yeah

Mr. Stern: right, exactly. So that was the thinking

Commissioner Hayward: understood yeah I guess it's it's only struck me that the FPPC us where is this weird kind of Commission that also has Department qualities to it you get this full-time share who starts being sort of like a department head and more and more stuff that conventional Commission's would talk about in open meetings because they have to because everybody's part time kind of fly under into this sort of administrative decision-making things at least in a couple of instances I think I've noticed that. the one criticism I've heard is that what this would do would be to house too much power in the staff and so that the appointing authorities of all of us don't have the same political diffuse power. Have you heard that criticism? What's your response?

Mr. Stern: I haven't. The difference right now, it's been a tradition that the Chair has picked the executive director, under this new approach, clearly the Commission would pic the executive

director. And the Commission would have much more control over the executive director, who, if they didn't follow what the Commission wanted, would be fired. Right now, the executive director has been, traditionally, let go every four years despite maybe being a terrific executive director because the new Chair wants their people in there. Sometimes the general councils have been asked to move on or take another position. This gives the part time Commission much more power and at all the other agencies that have this, I mean the executive director clearly does have more power than the executive director here I think because there is no full time Chair. But the Chair is clearly going to have a little more power than the committee, running the meetings and people will look to the Chair for comments, and what the Commission is doing. Clearly there is more power with the Chair, and im not suggesting you have a rotating Chair, for example, I still think the governor should still be appointing the Chair, but you'll have much more say so over what the staff is doing through the executive director.

2:20:00

Commissioner Hayward: and I think the point you make about volatility in in the senior staff is an important one and really I would not have appreciated before I served here because I would just be like well so of course but but there's a lot of learning that happens and to leave after only three or four years having, finally, I think gotten your head around everything that could happen and all the quirks of doing this business

Mr. Stern: and I think it's a terrible tradition to have the Chair come in and appoint a new executive director and that's why this isn't a new idea I've had, this is not a new idea I've developed this year. This is an idea I've had for a long time. It's like why is there always a new executive director every four years? And why is sometimes, there's a new general counsel? And sometimes an enforcement director. Now I understand why the Chair wants to come in, the Chair wants to make a mark in four years. So the Chair wants to do something, so it's really a big thing for the Chair being full time, its sort of a Chair's Commission. Now, it really should be the Commission's Commission

Commissioner Hayward: which is why I think that's or the aspect of it strikes me is being more like the head of a department

Mr. Stern: it's a good analogy

Commissioner Hayward: you know so thank you any more questions for Mr. Stern

Commissioner Hatch: I just wanna express my, sort of, feeling on this. As a student of local government, over the decades in my lobbying career, I've at times chafed over the city manager former government but ultimately come to the conclusion that provided a great deal of stability and elective Council members all of whom were co-equal even the mayor's some elected amongst themselves others are separately elected mayor's by the people but they all have the same powers and duties other than convening the meeting, presiding over the meeting and that I think your suggestion is a good one and if it were just up to me, we would sponsored legislation to do that. It's not just up to me and we are down to a bare quorum so it's clear to me that that's not within the courage today for us to sponsor legislation but I just wanted to let you know that I do appreciate you venturing out and exposing yourself to potential criticism for speaking out

publicly as it happens and I admire you for doing that and I also agree with your timing issue I truly believe anyone who is appointed to be a Chair of the Commission is going to expect to have the powers that they would envision a Chair to have and that's just not the case today and so if I were appointed Chair, I would be chafing to try and lobby the other Commissioners to give me back some of those powers or maybe all of them and so then you'd be back with everything upside down again every four years so I think there's a lot of merit to this, I would hope that if there's anybody in the legislative branch of government who listens to this proceedings maybe they might get a bright idea in the meantime to kind of maybe keep this alive if I could at the appropriate time I'd like to make a motion

Commissioner Hayward: all right. Are there any further discussions? are there any members of the public that would like to talk about this matter

Mr. Lang: Trent Lang, President of the California clean money campaign. We haven't taken a formal position on this idea but I think in general hearing the arguments that Mr. Stern has made that we are supportive of the idea I think we have seen over the years the the challenges that come up when you have a full-time Chair that has much more power than the rest of the Commissioners and it wasn't just one particular Chair that had that as as as he pointed out it's been through the history of the Commission understandably given that I think we really loved the Commission for taking the appropriate and necessary steps that you made with the governance principles which were being a very important way to get all the part time Commissioners back into the kind of input and feedback they need on a regular basis but it's still a challenge you have the imperfect case right now once you have a full-time Chair is being paid to semi significant sums of money they will not have very many responsibilities in fact they cannot even sit on any of the standing committees and and I would say that to me actually seems like a little bit of a possible issue as well I can imagine a lot of potential Chairs saying that's what am i doing am I just going to go there and get a paycheck and just sit down and do nothing so the part-time Chair issue might possibly do it I think we would think that'd be very valuable to explore the possibility of maybe increasing the the Commission from five Commissioners to seven because then you could have as as Mr. Stern pointed out you could have standing committees with three members that the Chairs could be involved with without dominating the standing committees which we wouldn't want either and then of course when you have situations like this where you have a couple of absences it's it's a challenge when you're only half you guys are doing a great job but that you ideally want to have more than three Commissioners presiding for for potentially months at a time and if you had a base number of seven Commissioners if two of them left you'd still have five and be able to do it well so I think from our standpoint this is a very very appealing idea I absolutely get the things about the timing of the new potential Chair on the other hand, this is a very new way and and we're just exploring these these options so maybe more time needs to be taken to see how the rest of the public and and groups and so forth and legislators feel about it as well so I can certainly see it that way but I just want to say that we are very supportive I think of the general idea because there are serious problems your governance principles took major steps forward to addressing some of those problems but just due to the limitations of the five-person Commission with a full-time Chair that still has some issues that we think need to be resolved and this might be one way if the details are worked out that you could help resolve those better

2:25:00

Commissioner Hayward: thank you. Any other comments? okay you had a motion
Commissioner Hatch

Commissioner Hatch: thank you. I would like to move that when we take the subject matter of this request and referred to the law and policy committee to do further research and potential recommendation back to the Commission at some later date

Commissioner Hayward: all right. That's your motion is there a second?

Commissioner Cardenas: second

Sasha: Commissioner Cardenas

Commissioner Cardenas: yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: yes

Sasha: motion passes

Mr. Stern: thank you very much for listening. I appreciate it

Commissioner Hayward: you're very welcome

35. Closed Session

Personnel Matter (Gov. Code § 11126, subds. (a) and (b); 11126(e)(1).) Discussion of complaint regarding actions by an employee and a determination of whether or not to initiate disciplinary proceedings.

Commissioner Hayward: okay. Where are we? 35. Oh we did 35 that's right closed session so now we are to executive statute with report. let's take a wee breather. Hard to get anything done with just two of us here. a wee breather

Commissioner Hayward: and that was our we break and we're back.

36. Executive Staff Reports.

Enforcement Division. Galena West, Enforcement Chief
Legal Division. Brian Lau, Acting General Counsel

2:30:00

Commissioner Hayward: so executive staff reports. during the notebook does anybody have anything they want to say. you're looking at me like nothing. why I do so I'll stop doing what I'm doing over here. I try I tried to read the advice letters every month um don't always succeed but in this particular month I was drawn to letter A 1803 5 advice given to Emily Andrews regarding what an entity that has different kinds of funds some of which were segregated because they cannot be used in political expenditures how that entity should report its top contributors. and the advice I think how I understand it is that under the disclose Act there's no differentiation of accounts for lack of a better word that are political and non-political and so the top contributor would be determined by the top contributor regardless of whether or not it was contributor who gave money out of 501(c)(3) that could not be used for political purposes. and so I guess the upshot of this is that if you've got a advertisement you will have in fact top contributors disclosed it did not give any money at all for that advertisement cuz they're not allowed to it's, not legal. I don't think the viewer of that advertisement is going to appreciate that. I think this is a really strange conclusion even if it turns out that through the statute this is the conclusion that's required I would really like to talk about this more because you know I come from campaign finance compliance background where many of my clients have had multiple accounts with different kinds of money in them and so you've got the money that you can't use for politics, there's the money that you can use for maybe issue advertising but not Express advocacy, there's the no holds bard political money, there might be money that you only use in certain states because of things like the major donor requirement in California. and that's kind of the bread and butter of what and geeky people like me do for a living and this just seems to fly past all of that and into my microphone and I think this is wrong that'd be if I'm wrong, I think we still need to have a robust public discussion that's been flushes this out. And so that's my position. I know that when we withdrew a letter before, we didn't do it exactly perfectly according to an email that we got from our acting general counsel and that's fine I'm gonna do it right this time but then I would really like to see this come back as action item with the, that the public will comment on and that we'll get our hands around because I think it's an issue a first impression and I think we got it wrong. So go, whoever wants to talk.

Mr. Lau: I'll just start with I think substantively there's not a lot there in the disclosure act that supports, to rely on to support an interpretation that committees can somehow segregate, separate funds. Not just, this question has been posed not just in a

Commissioner Hatch: sorry

Commissioner Hayward: wait a second

Mr. Lau: no problem

Commissioner Hatch: I'm trying to figure out how to stop it. Sorry.

Commissioner Hayward: you shouldn't be allowed to have one of those

Commissioner Hatch: apparently not. Trying to figure out how to make it go away.

Commissioner Hayward: that's twice. Alright, you good?

Commissioner Hatch: yea, I'm good

Commissioner Hayward: ok. Start again

Mr. Lau: I think statutorily there's just very little there. I'm very cognizant of the fact that the Commission has expressed disapproval in the staff stretching legal interpretation too far especially via advice letter and on top of that we also have the quantity threshold for advertisements and I took a very general sense of the strict interpretation of the disclose act from the Commission as a whole. So those were the two thoughts that kind of went into the advice that was provided if that helps.

Commissioner Hayward: yea

Ms. Peth: I just want to note there is a foot note in the letter that discusses, if they would like a change in position on this that it would be better done through a opinion or a regulation. So, that is in there.

Commissioner Hayward: I think, I, yes.

Commissioner Hatch: yeah that was my point right he got to me was I thought that this was the first impression broadly applicable this should not be done with an advice letter. I would favor you know setting this July agenda with an eye towards withdrawing it in favor of then starting a proceeding to do a Commission opinion. Certainly I think there's damage and can be done by people who are cleverer than I am where they can hide major contributors that are not considered to be white hats by having large 501(c)(3) money dropped in at the same for the appropriate time so that 501(c)(3) is the limits on the on the disclosure and not the black hat and not that the current people are doing that it's just it's an unfortunate result well I'm not a lawyer so I don't know the nuances of whether or not this is a correct opinion or I should say non opinion advice letter nonetheless I'm concerned that it we should have with a hard look at it and the do it as a Commission opinion because it's broadness impact and then is a case of first impression.

2:35:00

Ms. Peth: so just to clarify on, putting on the July agenda, would it be satisfactory to notice it as something consideration or discussion, consideration of advice letter number whatever with the potential, the Commission may vote to withdraw and determine further action or something.

Commissioner Hayward: Yea. And I don't think, I don't know at that point we feel comfortable enough with coming up with some sort of positive statement of advice but right so let's write an agenda item that doesn't foreclose that.

Ms. Peth: okay

Commissioner Hayward: if we get you know lots of great research and information in the next month and it becomes relatively clear to us how, how we ought to interpret this then we might be able to actually do that, but certainly I want to look at it again

Commissioner Cardenas: we're still talking about advice letter 1803 5

Commissioner Hayward: yes

Commissioner Cardenas: I have a question about that. so it is possible then what I'm gleaning from Commissioner Hatch's question, so it's possible for a 501(c)(3) contribution which could not be made for political purposes but could go to what overhead is that a recipient committee couldn't receive that and use it for their own overhead, but not for

Mr. Lau: I am not familiar with that law, but I agree. I believe that is the justification that the committees are using

Ms. Brar: I can answer that a little bit. The committees, that they are talking about in this letter are general purpose they may support ballot measures or candidates and the 501(c)(3) are prohibited from making contributions to support candidates, but they can do it for measures. So that's kind of why they are able to. This committee is a 501(c)(3), its able to take contributions from the 501(c)(3) for ballot measure purposes. It can be used for that. If that makes sense.

Commissioner Cardenas: so the 501(c)(3) can receive from a 501(c)(3), but the moneys donated, contributed, by the 501(c)(3) cannot be used for political purposes.

Ms. Brar: cannot be used for support or opposition of a candidate.

Commissioner Cardenas: ok

Ms. Brar: but can be used for support an opposition of a ballot measure

Commissioner Hatch: could you clarify that's not our law that says that correct

Ms. Brar: that's yeah that is IRS tax law

Commissioner Cardenas: can it be used for the 501(c)(4) s overhead expenditures in a way which is which can be characterized as as a non-political use of such funds

Ms. Brar: I believe so, I believe they can take donations. I'm not one hundred percent sure on the overhead portion either, I'm sorry

Commissioner Cardenas: because could we not imagine a situation were such such a receipt has the effect of. Yeah, could it not free up money? Right?

Commissioner Hatch: I do know that they cannot be used to pay for lobbying expenses even if it's not smoking cigars lobbying in other words a public interest lobbying cannot be funded by 501(c)(3) source

Commissioner Cardenas: so a 501(c)(4) is overhead it not as actual political expenditures like buying you know like buying time could be serviced funded by 501(c)(3) contributions but could that not have the effect of freeing up money on the part of the 501(c)(4) which could then be expended for political purposes which otherwise would have had to go to overhead expenditures

2:40:00 Mr. Lau: I think that's definitely a possibility and I wouldn't venture a guess of how the IRS would how the money was spent and for what purposes, but often what we have is the money going into one pot so for every, so while the suggestion here is that they somehow segregate it, it's very possible that if money comes in for one purpose, it frees up additional money for another purpose. I think it is a possibility.

Commissioner Hayward: If I could interject, I think that's a good question for maybe us to come back and discuss because I don't think any of us are prepared to say definitively today I antidotally know in my experience is that sometimes 501(c)(3)s have limits internal to their own of what they give money for and general support tends not to be something that they like to do they have a particular project they want to see particularly happened and they don't want to you know pay the general stuff relationship. Does that mean there could be a cozy relationship that doesn't follow that general form yeah but I'm not sure I'm not sure we're prepared to have a intelligent discussion on that so let's talk about that next month all right

Commissioner Cardenas: Can, whatever you need to do to make sure it is talked about next month.

Commissioner Hayward: so where are we proposed future agenda items or do you have something more on

Commissioner Hatch: I just because this be posted for the July agenda then usage that would be happening so that I have a few other quickly, on other advice letters if you wouldn't mind.

Commissioner Hayward: oh absolutely go ahead

Commissioner Hatch: okay number 65 – 18065, Robin Peters. It seemed to me that answer two could be fractionally incorrect. This is about a non-profit, the Chair of whom has for many years been Chair and has in the past solicited contributions on behalf of the organization, the KFA is the acronym they were using here and so it's common knowledge that he's so like OJ Simpson was with reference to herds synonymous is a long time Chair he's actively fundraising on behalf of the organization for quite some time in things that did highlight him as a featured person but in this case now he's asking you know if I send out something that doesn't have my name and my picture do I have to treat this as a behest payment. It seems its almost impossible to not think about him locally as this being him asking for it because, like I said, he's been Chair this whole time and it also follows that contribution to KBFA. KFA, excuse me. I think KBFS is a radio

station. Would be viewed as favored by him. In other words, anyone want to curry favor, drop ten grand on KFA because you know the Chair's gonna come twist your arm anyway. So, I don't know, my thought was perhaps if your right on the law maybe we need to take another look at the reg 18215 to see whether there is some criteria that could be adjusted. That's all. I don't think you need to answer definitively, you know just my rants. The next one was Matthew Alvarez.

Mr. Lau: I guess I would clarify, I mean its one thing for us a single Commissioner to provide direction to look at a regulation. But I would also, just for clarity sake I mean, its one thing for one Commissioner, its different for the direction of the majority of the Commission if there is an issue. It's actually 18215.3 which was adopted about five years ago. I will forgo my comments on the merits of the letter if that's what the wishes are. Its hard for me to know how to respond to the direction of a single Commissioner as opposed to the direction of the Commission

Commissioner Hatch: I think there was a there's a there was a legal question embedded in the directions, so I'd love to hear the answer I did not look at this one carefully and behested payments is something that is new to me

2:45:00

Mr. Lau: ultimately, it is something that is very common to serve on non-profit boards. So about, and we've routinely received question of how, at which point do their solicitations become solicitations that have to be reported vs behested payments vs at what point is it just a general solicitation from a non-profit that doesn't identify the official. In which case there's no real leap between the money coming in and the money going in because of the official. So to clarity, about five years ago we adopted 18215.3 which provided, essentially a safe harbor if an advertisement went out that didn't feature the official whatsoever, that official wouldn't have to identify those received in response there's a dissertation as it be has to pay so it wasn't as a safe harbor because a lot of officials who sit on nonprofit boards are very concerned with having to report every single donation that's received by the nonprofit board. So, often, that was the regulation, I think this letter if very much consistent with that regulation and removing that regulation opens up, again that big question at which point does something come in because of the solicitation and whether or not the solicitation is treated as a contribution to the nonprofit as opposed to one behested

Commissioner Hatch: and im going to have to disagree with what you just said if they were starting fresh according to what I read there in the details there was a history of him doing behested payments on behalf of the organization so his name was already linked in that respect so now it's like we're coming back after a period of behavior that he has been doing behested activities on behalf of the Commission so it's a small community so he's well known to be the guy who's going to lean on you for money for the entity so that's the concern I had is where you you've already established a behest patterned and then you wanna like dial it back to try to avoid you know the activity that I was my concern

Mr. Lau: I don't read as much involvement in the facts provided as you have read into them and as far as the behested payments in the past, he's indicated that he's behested payments from friends and family in the past and he was wondering if those had to be reported and we told him yes they did. I asked, I don't really have a full set of facts as far as the extent of his involvement

in behested payments in the past and his state of involvement in this non-profit which ultimately isn't really a non-profit, it's work. The thing is the Chair, the organization he's a Chair for is actually working under a larger non-profit, Amador Community Foundation

Commissioner Hatch: but they have to ear mark it in their report

Mr. Lau: it does appear that donations come in ear marked for that particular organization

Commissioner Hatch: when I raise the regulation issue, and I realize it's not just up to me but would be to deal with this issue of whether you've got a past practice of trying to raise money in a behested manner and trying to dial it back to avoid future disclosure and I don't know if that's even possible that's just by view

Commissioner Hayward: I'm actually fine with the advice okay I mean I think the safe harbors have that effect of sometimes in particular instances that lovely bright line looks a little handy to someone but bright line rules are nice because then everyone knows what to do so let's trade offs. You had another letter you wanted to talk about

Commissioner Hatch: yeah, I do

Commissioner Hayward: okay, please go ahead

Commissioner Hatch: Matthew Alvarez, number 80. My comment is not to the merits I thought that this was an issue that is an example of the kind that should be addressed by regulation or a Commission opinion not an advice letter it was broad in its application it was a relatively new issue

Commissioner Hayward: oh this is the recrafted disclaimer

Commissioner Hatch: right

Commissioner Hayward: yeah I see your point in that this is an advice we've given before

Commissioner Hatch: I have no opinion if they're right or not. Im just saying that its something, you know

Commissioner Hayward: yeah, this is the kind

Commissioner Hatch: advice letters they're supposed to be fact specific unique to the person this is not and it's a case of first impression

Commissioner Hayward: and it's informal too

Commissioner Hatch: so would you like to talk about Alvarez at a future meeting and get something bit more official on the record

2:50:00

Commissioner Hatch: yeah, actually maybe requests if I can be joined to put that on the future agenda item just to see whether or not that should be pulled back in favor of taking some other action if appropriate

Commissioner Hayward: okay that sound good?

Mr. Lau: ok

Commissioner Hatch: Damien Brower this is this is my non-golfer's golfer's speech. I guess I was wasting my breath. This is a follow up request on the same issue with minor adjustment of facts but they provide a supplemental information to see

Mr. Lau: correct almost immediately after the last letter went out they contacted us with a rather insignificant additional fact. We tried to advise them morally that that fact would not change the ultimate letter. They did request that we confirm that in writing so we provided a second letter. I apologize if you think you didn't think your points weren't taken into consideration. I do know your points. We also have a letter here, we call of course closure, and we are telling the officials that they are disqualified. Again in this particular matter, we had two golf courses that took up a large portion of the city. A lot of, most the the residents, a lot of the residential properties in the city were around the two golf courses and the two golf courses were being merged into a single golf course, keeping an opportunity for gold and converting the closed golf holes into open space. Again, I did say it was a pretty borderline case as one of the ones, you know, you can look at it and I doubt you could reach a good consensus if you got the same five people in a room. It's hard to something like this I was taking but at the same time we was not there was a Commission direction to change that advice and I didn't think the point that this one out that the advice was still ethical advice and despite your concerns

Commissioner Hatch: I get your concern and also volunteer, I think that certainly appropriate to do an advice letter that is very fact specific. So I was calling attention to my earlier speech and that is water under the bridge. And one last one, John Imperato. It's number 81-18052. And this is about an advisory Commission that looks like it's for a single purpose or as soon as a single thing surrounded is a single purpose and they're gonna, they're recommendations will influence the decisions in the City Council that appointed him and the Coastal Commission as well and they were appointed by the council to carry out a government purpose my question was how then can they not be considered public officials which was the out in this case when a paid consultant would be required to be covered by this it paid consultants recommendations are not binding they're just offered for hire. so I looked at the regulation and seemed like there's a bit of a loop hole there. So I don't disagree that you had, you know, back up in the regulation, but im just thinking that maybe it was not sharp enough at the time they adopted, we adopted, that regulation. That's all I have on that.

Mr. Lau: did you want me to comment?

Commissioner Hatch: sure

2:55:00

Mr. Lau: often, advisory committees are rather common, its problematic to treat advisory committees as government officials in that the actual business entities that want to be represented on the advisory committee will not be able to serve because of it is a conflict of interest. And if the conflict of interest provision is applied, you cant have those business entities even serve on the advisory committees and the other situation is many members of the advisory committee aren't willing to server if they have to disclose their business clients. So there's always been a separation, historically, between advisory committees that are set up for a one time purpose or setup in a way that they're truly advisory meaning the city council or governing body is not rubber-stamping their decision. That's separated from an advisory body that's not truly advisory in that its set up, it serving for a long period of time and the governing body can routinely rubber-stamp their recommendations. That's the station has been made historically in regards to private contractors. There's actually a similar rule that applied in the private contractor/private consultation situation. If that contractor was hired to make decisions for the governing agency we treat them as a government official. However if they were hired to just make recommendations, unless the recommendations were made to the point that the routine constantly provided and it somehow become a matter which we call staff capacity if they, I've seen a public engineer who was a contracted city engineer but he had been serving as the city engineer for 20 years, in all aspects, essentially, he was the city's chief planner. So then you become a private contractor and you have that long standing relationship, then you become a public official, but if you are private contractor hired for a one time job it's generally not really is a public official so there is a similar distinction for the public contractors as well

Commissioner Hatch: but the standard is influence, not necessarily

Mr. Lau: you're right it is influence, but the question just becomes, at which point does providing these recommendations somehow become influencing versus actually being reviewed by

Commissioner Hatch: the advisory committee is not binding on the council but it does influence the council and so it seems like that's kind of close

Mr. Lau: here's a real world example. We could take our, if our ad hoc committee for enforcement was treated as an advisory committee, if that were treated as government officials some of those political law firm attorneys would not be able to participate because, ultimately, they are being paid at the same time by clients who have interest in enforcement matters. So if advisory committees were treated as governing bodies and all the members treated as government officials, the conflict of interest rules would preclude the use of advisory committees, so I would be very cautious in

Commissioner Hatch: yes certainly if they were stakeholders. Yeah, I could see that. Okay, thank you. That's all. Go ahead

37. Proposed Future Agenda Items.

Note: The Commission may not discuss or take action on any matter raised during public comment that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 & 11125.7(a).)

Commissioner Hayward: ok. I think we're ready to move to proposed future agenda items. So, so far my list from today's meeting includes the two advice letters, the one on Alvarez San Jose written disclaimer and the one about the 501(c)(3) money. I think were looking to see a revision of the Bagley-Keene advice requests the usual stuff from everybody else is there anything I'm missing? Was there anything anyone wants to put on a future agenda that I haven't mentioned?

Ms. Peth: Commissioner Hayward? Just from staffs perspective we wanted to give an update to the Commission that were planning to bring back the regulation that would modify the enforcement streamline program for a prenotice discussion in august just to refresh everyone's recollection. We did have an interested person's meeting on that in conjunction with the enforcement review IP meeting and so miss West will be working on a draft of that that will be presented to the Commission in august and we wanted to move forward with that because it doesn't, I know the Commission expressed a lot of interest in that. I think it would help enforcement and the regulated community has also expressed interest in looking at that. So, even though we have the enforcement task force also going, we thought that would, it would be on concurrent tracks. So, our plan is to bring that back in august.

Commissioner Hayward: that sounds fine to me and then there is the the Reg that we discussed about subsidiaries and corrections to bring that that's not next meeting, that's the meeting after

Ms. Peth: right, that will be in august as well

Commissioner Hayward: anything else?

Commissioner Hatch: not on my part

Commissioner Cardenas: when is the July meeting?

Commissioner Hatch: the 19th I believe. Is that correct?

Mr. Wierenga: the 19th.

Commissioner Hatch: yea, the 19th.

Commissioner Hayward: any other business?

Commissioner Hatch: nope.

Commissioner Hayward: motion for adjournment.

Commissioner Hatch: I move for adjournment.

Sasha: Commissioner Cardenas

Commissioner Cardenas: oh sorry, yes

Sasha: Commissioner Hatch?

Commissioner Hatch: aye

Sasha: Commissioner Hayward?

Commissioner Hayward: yes

Sasha: motion passes

Commissioner Hayward: and we are adjourned. Thank you everyone

The meeting adjourned at 1:31 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
July 9, 2018