



(Unapproved and subject to change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Timestamps from [Commission Meeting 5/17/18](#)
Thursday, May 17, 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

Chair Remke called the meeting to order at 10:00 am on May 17, 2018, at the Fair Political Practices Commission, 1102 Q Street, Suite 3800, Sacramento, CA 95811. Chair Remke and Commissioners Audero, Hatch, and Hayward were present.

Welcome

Jodi Remke, FPPC Chair

Chair Remke: okay let's go ahead and get started and take the roll

Sasha: Commissioner Audero

Commissioner Audero: here

Sasha: Commissioner Hatch

Commissioner Hatch: here

Sasha: Commissioner Hayward

Commissioner Hayward: here

Sasha: Chair Remke

Chair Remke: here okay good morning I just have a couple items number one you may have seen this on our website but the Commissioners have voted to have a meeting on June 4th at 9:00 a.m. to discuss the proposed governance regulations the agenda for that meeting will be posted on May 25th second of all as you know June 5th is the statewide primary election so I have

asked Miss West to give us an update and overview on the pre-election activities her division has undertaken

Ms. West: thank you good morning Glenna West Chief of Enforcement yes the election season is upon us so we do certain pre-election efforts because one thing that we of course as a Commission hold important is disclosure and disclosure before the election is the most important kind and what is also a side benefit is that candidates that disclose before the election are far more cooperative than candidates that lose and disappear after an election so it's a side benefit to enforcement as well as a benefit to the people of California and the voters so for candidate non-filing we reached out to all 58 counties and the cities with populations of 100,000 or more which this year is 7 cities with elections and we asked them if they want to participate in the program this year all but three counties in one city participated and what they do is after the pre-election filing deadline a couple days after they will send us their non-filers and we will contact them directly and get them to file and so we had had eighty-seven non-filers as a result of the program and all but twelve have filed thus far and we're working on those twelve and then the next pre-election statement is due 5/24 so we will do the same thing for that and the clerk's seem very enthusiastic about the program they like of course to get a hundred percent filing in their jurisdiction another component is advertisements so the investigators and attorneys review advertisements political ads throughout the state to try to gain compliance before the election and this year with the disclose Act going into effect in January it's especially important for us to do a lot of outreach in order to try to get the disclosures correct and then lots of internet searches lots of sites that didn't have disclosures that we've reached out and gotten disclosures on the especially Facebook ads and web sites most of the yard signs were correct so that's good I have a something positive to report we also look for proactive campaign money laundering during this season where we review the statements as they come in in the jurisdictions with limits in the state elections as well and look for the patterns of money laundering and then I would also say there's a definite increase in complaints so in January we received 23 complaints in February 47 in March 74 in April 83 and we're at mid May and we've already received 126 this month and that's just complaints not referrals so it does tick up drastically and so we are trying to stay on top of everything and respond to the complaints as quickly as possible especially ones that have to do with the election

Chair Remke: and as far as those twelve non-filers I know in elections past you've had to go to court to gain compliance is that still the ultimate goal or the final step if you can't get compliance

Ms. West: yes the final step is a civil injunction to cause them to file we prepared three civil injunctions in the 2016 only had to file one and in fact I believe he's on the agenda this month but so generally people do comply and they we get a hundred percent compliance before the election even in the case of the civil injunctions it was a day before the election but we will do what it takes to get everybody to comply so it's a level playing field for everybody and the voters have all the information

Chair Remke: okay well thank you for that update and for your divisions hard work during this busy time

Public Comment

- 1. 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.

5:00 Chair Remke: so first is public comment for items not on the agenda is there anyone here who would like to speak during public comment for an item not on the agenda okay seeing

Commissioner Hatch: there's nobody in the public I did some have something I wanted to bring up about that I read an article in the news clips about Bitcoin and whether or not that's an acceptable form of contributions and I'd sure like to know I wasn't around when this was first raised but it seems like we sort of don't have a position but we've expressed our opinions with the press at various times and I'd like to get a sense of how do we how do we get to no position but express our opinions and how should we be dealing with this I would ask legal or

Mr. Lau: as now since it's just kind of a public comment session I we will contact you and go over our options in the next week is that

Commissioner Hatch: yeah I just like to focus on this and find out should we have we may well should have a formal position on but doesn't seem that we do from what little I can gather

Mr. Lau: okay we can contact you we can work out what you're thinking

Commissioner Hatch: and I'm not sure how I feel about it but we should have a position one way or the other

Mr. Lau: okay

Commissioner Audero: I have some comments on that

Chair Remke: Commissioner Audero

Commissioner Audero: so I read the same article and I was very surprised at what I read because it really did seem to imply that we have a position so I did some research to try to figure out what has happened in the past and when the FPPC has spoken on the issue so here's what I found and it's a little bit troubling so I want to I want to bring it out and I know we can't have an action item on it but I'm gonna have an action item for an agenda item for next month but so historically I number one I spoke with Ann Ravel and she said that had not been an issue that had been discussed by her Commission so I started doing some research and the first thing that I could find where we are mentioned in connection with Bitcoin is and I'm just going to put these on the record I'm just going to hand them to you and I'd like them added to the agenda but is a

December 2013 article about a Newport candidate who was accepting Bitcoin and it actually says you know he he handled it in a particular way and he says you know I I feel confident that this process will ensure that you know the Fair Political Practices Commission stipulation is complied with so that's I'm just gonna set them here and you can get them later so that's the first time so it was in December 2013 then a councilmember Rishi Kumar in a 2014 election accepted Bitcoin and actually had set out some interesting rules if you're going to you know you have to confirm your age and you know a lot of disclosures that went along with Bitcoin so I found that was interesting he there there is no there wasn't any mention of the FPPC on that one but I just found it interesting and then there was an article also in 2014 in May so Jay can you come up for a second because I have a question for you so there was an article in May 2014 that quotes you Jay saying referencing Bitcoin it says they are not prohibited but we recommend against it at this time because we want to ensure that the true donors are identified and disclosed we're continuing to evaluate the issue as new decisions facts and technology develop so I'm wondering where that came from

Mr. Wierenga: Commissioners Jay Alan Wierenga Communications Director that came from consultation with both Enforcement and especially Legal Division at the time and that was the the advice the the comments I was given

Commissioner Audero: so did that get run by the Commissioners did the Commission approve this policy position

10:00 Mr. Wierenga: that I'm not sure of again I consulted with the Chief Legal Counsel and other legal counsel at the time within the FPPC and that was the the the the consult I was given

Commissioner Audero: so this is fair enough thank you so this is what concerns me as I sit here and think about how much time we spent talking about Commission or granted this was back in 2014 right Commission oversight and underground regulations that I know Chair Remke was very concerned about last month and I feel like this is the quintessential underground regulation right it's a policy position taken by staff that wasn't run by the Commission at all and I can tell you that it wasn't run by the Commission because I actually looked at the 2014 agendas and I looked at the minutes of the 2014 meetings and there was no discussion about Bitcoin and of course Ann Ravel confirmed that so that's that's troubling but then then we go to the June 2014 meeting where we where the Commission receives a what is this called a report of division activities from Linda Cassidy the Chief of Technical Assistance Division and it basically she says she says in it a revised campaign fact sheet was also posted that addressed staff's recommendation that campaign committees not accept bitcoins until Commission has reviewed this matter and I my head exploded because now I'm seeing okay now we have FAQs out there that are taking positions that were not run by the Commission so I went and I found those FAQ's and sure enough there is question 24 which says and I'll just add this to the list of documents but it says may a committee accept a contribution in the form of bitcoins a type of digital currency and the answer I'm not going to read the entire answer but the relevant part is the Commission has not yet formally addressed this issue however the staff has done extensive research on the topic and recommends that committees not accept bitcoins whether digital currency as campaign contributions at this time and then it goes on to say the reasoning and it's the anonymous nature

15:00

of the digital currency etcetera and what's interesting is that this language then gets picked up by the press as Commission statements and and I'm for the record I'm doing air quotes around Commission statements because they really aren't Commission statements so here we have a situation where in May you say it's not prohibit you Mr. Wierenga say it's not prohibited and then in June we come out with FAQs that say number what we haven't looked at this although we've done some extensive research but we recommend that Bitcoin not be accepted and I find that really troubling because if I am somebody out there trying to run a campaign I'm gonna wonder what do I do right and so so that to me is is troubling and and and and it affected campaigns going on at the time I mean we have an article also in 2015 that says Gavin Newsom had accepted Bitcoin and then that he was going to accept Bitcoin for his run for the governor's position and then and then here we are again now in 2018 where Wisconsin has this is that article that came out where Wisconsin picks up these statements made in our FAQs which I would argue were unauthorized by the Commission and quotes us as not as recommending against Bitcoin and then there's another Wisconsin article that follows that and kind of quotes the first Wisconsin article so you know I am troubled by the fact that staff took a position at one point now here we are four years later I personally don't have a position on Bitcoin I don't know what the answer is I don't have the expertise to come up with an answer I question whether staff had the expertise at the time to come up with it but I am very very curious about what this extensive research is that was done so I'd ask Miss Peth to find that extensive research and provide it to the Commission and you know if we need to make it an agenda item for that next month I think we should and I think that's fine but the point that that I want to make for right now as a public comment without action though I will have an agenda item for next month is I agree with Commissioner Hatch that we need to take a position on this I don't think that it is going to be an easy position to to come up with because I think it's a very complicated issue but what I do know is that it is not the position or the role of staff to make that policy decision and to the extent that there is a policy decision out there that wasn't adopted by the Commission I think it needs to be withdrawn until we take a position and we can deal with that at the next meeting where there will be an agenda item I will say that I think it may take more than one meeting to decide what our policy is on this because like I said it's it's a complicated issue it involves technology I think we're gonna need to bring experts to talk to the Commission on on this issue I actually had an expert in mind and unfortunately it fell through but I'm sure that there are plenty of experts out there who would be willing to share their expertise with a Commission who very much will need it to reach a policy decision so I'm gonna have an agenda item at the end on this but I I do want to make very clear what my position is on this existing FAQs and the fact that there was a regulation that was taken without Commission approval so that's that's what I have to say thank you

Chair Remke: okay so anything else on Bitcoin before we move on okay anything else from the Commissioners before we move on to item 2 and minutes nothing

Approval of Commission Minutes

2. Approval of April 2018 Commission Hearing Minutes.

Chair Remke: okay item to the April Commission minutes any comments or Corrections from the Commissioners before we approve them is there a motion

Commissioner Hatch: I'll move

Chair Remke: is there a second

Commissioner Audero: I'll second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: aye

Sasha: Chair Remke

Chair Remke: yes

Sasha: The motion passes

Enforcement Consent Calendar 3-17

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.

Chair Remke: okay the enforcement consent calendar items 3 through 17 do the Commissioners have any items they'd like pulled from consent for a separate vote okay Miss West

Ms. West: hello Galena West Enforcement Chief I would like to make a note on one item and pull item 17 in the matter of Brenda Lewis and Lewis for Water Board 2013 Miss Lewis has filed her statements and has indicated more than before so we would like to deliver

Commissioner Hatch: what was the item number?

Ms. West: item number 17

Chair Remke: it was a default proceeding

Ms. West: I believe you received an email about it being pulled

Chair Remke: okay so that one you're pulling and then you had a comment was that an item four

Ms. West: yes item four the incorrect version of the stipulation was posted and you've received a corrected version the corrected version has been uploaded to the website I wanted to make a note of it and I wanted to apologize to miss Jackie Wong since it was not the version that she agreed to so we wanted to make sure that that was clear

Chair Remke: okay any questions for Miss West regarding the items on consent

Commissioner Hatch: I move the consent calendar

Chair Remke: but I just want I actually had just was looking for the number I have a comment

Commissioner Hatch: oh

Chair Remke: I just wanted to talk about item three and it being the San Bernardino and again with pre-election activities and our work with San Bernardino I just wanted to know if you could provide kind of a sorry on-the-fly brief update as to what's going on with San Bernardino this election I know the first elections we entered into a contract with them there was a lot more work to try to get them up to speed and get full compliance again and so I'm just wondering where we are now

20:00 Ms. West: sure the Education Department would probably be the best people to answer that right now because it's currently in their court where they're working with the candidates in San Bernardino and providing advice and guidance to them to make sure that they're in compliance when it becomes our area is after the election is over then we will perform audits of all the candidates that reaches the threshold in San Bernardino

Chair Remke: but then the same if they're working with the candidates now and they see an issue of non-compliance do they refer to you to get the compliance along with the other pre-election activity

Ms. West: generally, if there's an issue of non-compliance the education division usually gets compliance with the people we contract with that's good all right that's all I wanted to just share a little bit about that so there was a motion Commissioner Hatch

Commissioner Hatch: yes

Chair Remke: 3 through 16 you're moving

Commissioner Hatch: I'm moving the consent calendar

Chair Remke: so 3 through 16

Commissioner Hatch: absent 17

Chair Remke: okay is there a second

Ms. Peth: Chair Remke I'm sorry I don't think you asked for public comment

Chair Remke: oh I didn't thank you any public comment on the consent items 3 through 16 okay there is no public comment there's been a motion and is there a second

Commissioner Hayward: I'll second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: aye

Sasha: Chair Remke

Chair Remke: yes

Sasha: The motion passes

Chair Remke: and then 18 and 19 are just the notice of intent to present default decisions no action is required on those. those are just a pre-warning of an upcoming default to provide as much notice as possible

San Bernardino County Ordinance – Campaign Contribution Limit Violations

- 3. In the Matter of Wyn Holmes; FPPC No. 16/589.** Staff: Commission Counsel Michael W. Hamilton and Special Investigator Paul Rasey. Wyn Holmes, a real estate developer in Southern California, made contributions over the limit to San Bernardino County Board of Supervisor Candidates Bill Holland and Paul Russ prior to the June 7, 2016 Primary Election in San Bernardino County, in violation of San Bernardino Ordinance 12.4305, subdivision (a) (2 counts). Holmes failed to timely file major donor campaign statements to report the contributions made in 2015 and 2016, in violation of Government

Code Section 84200 (1 count); and failed to file one 24-Hour Report, in violation of Government Code Section 84203 (1 count). **Total Proposed Penalty: \$10,500.**

Personal Use

- 4. In the Matter of Jackie Wong for School Board 2016 and Jackie Wong; FPPC No. 17/621.** Staff: Commission Counsel Theresa Gilbertson and Supervising Special Investigator Jay Martin. Jackie Wong was a successful candidate for the Washington Unified School District Board Member in the November 8, 2016 General Election. Jackie Wong for School Board 2016 was her candidate-controlled committee. The Committee and Wong made expenditures of campaign funds not related to a political, legislative, or governmental purpose, in violation of Governmental Code Sections 89512 and 89517 (1 count). **Total Proposed Penalty: \$3,000.**

One Bank Account Rule

- 5. In the Matter of Barbadillo for Milpitas City Council 2014 and Garry Barbadillo; FPPC No. 15/248.** Staff: Commission Counsel Theresa Gilbertson and Program Specialist Patricia Ballantyne. Garry Barbadillo was a successful candidate for the Milpitas City Council in the November 4, 2014 General Election. Barbadillo for Milpitas City Council 2014 was his candidate-controlled committee. The Committee and Barbadillo failed to pay campaign expenditures from the designated campaign bank account, in violation of Government Code Section 85201 (1 count). **Total Proposed Penalty: \$2,000.**

Lobbying Non-Filer

- 6. In the Matter of The Brimley Group; FPPC No. 17/1392 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Intake Manager Tara Stock. The Brimley Group, a lobbying firm, failed to timely file three lobbying firm reports covering the periods of January 1, 2017 through September 30, 2017, in violation of Government Code Section 86114 (3 counts). **Total Proposed Penalty: \$971.**

Campaign Reporting

- 7. In the Matter of Pam Bertani for Solano County Supervisor 2014 and Pam Bertani; FPPC No. 14/1112.** Staff: Senior Commission Counsel Bridgette Castillo and Staff Services Analyst Dominika Wojenska. Pam Bertani was a successful candidate for Solano County Board of Supervisors in the June 3, 2014 Primary Election and an unsuccessful candidate in the November 4, 2014 General Election. Bertani has been a member of the Fairfield City Council since 2011. Pam Bertani for Solano County Supervisor 2014 was her candidate-controlled committee for the 2014 elections. The Committee and Bertani failed to timely disclose contributions, expenditures, and contributor information on two pre-election and one semiannual campaign statements for the reporting periods of January 1, 2014 through June 30, 2014, in violation of

Government Code Section 84211, subdivisions (a)-(f) (2 counts); and failed to timely file three 24-Hour Reports, in violation of Government Code Sections 84203 and 84203.3 (1 count). **Total Proposed Penalty: \$7,500.**

Campaign Non-Filer

- 8. In the Matter of Global Investment & Development, LLC; FPPC No. 17/622 (Streamline Settlement).** Staff: Commission Counsel Christopher Burton and Political Reform Consultant Teri Rindahl. Global Investment & Development, LLC was a major donor committee for the years of 2013 through 2017. The Committee failed to timely file six semiannual campaign statements covering the reporting periods of January 1, 2013 through December 31, 2016, in violation of Government Code Section 84200, subdivision (b) (6 counts); failed to timely file nineteen 24-Hour Reports, in violation of Government Code Section 84203 (19 counts); and failed to timely report expenditures on a semiannual campaign statement, in violation of Government Code Section 84211, subdivisions (b), (i), and (k) (1 count). **Total Proposed Penalty: \$6,734.**
- 9. In the Matter of No on Measure M 2016, Damien Goodmon, Lewis Hall, and Thomas D. Carter; FPPC No. 17/290 (Streamline Settlement).** Staff: Commission Counsel Christopher Burton and Intake Manager Tara Stock. No on Measure M 2016 was a primarily formed ballot measure committee opposing Los Angeles County Metropolitan Transportation Authority Measure M on the November 8, 2016 General Election ballot. Damien Goodmon was the Committee's principal officer. Lewis Hall served as both the Committee's treasurer and principal officer. Thomas D. Carter was the Committee's treasurer. The Committee, Goodmon, Hall, and Carter failed to timely file two semiannual campaign statements covering the reporting period of October 23, 2016 through June 30, 2017, in violation of Government Code Section 84200, subdivision (b) (2 counts); and failed to timely file nine 24-Hour Reports, in violation of Government Code Section 84203 (9 counts). **Total Proposed Penalty: \$2,829.**
- 10. In the Matter of Clark & Sullivan Builders and Kevin Stroupe; FPPC No. 17/1430 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Staff Services Analyst Hayley Porter. Clark & Sullivan Builders, a real estate developer in Northern California and a major donor committee for the years 2014 and 2016. The Committee failed to timely file two semiannual campaign statements covering the reporting periods of January 1, 2014 through December 31, 2014, and January 1, 2016 through December 31, 2016, in violation of Government Code Section 84200 (2 counts) and failed to file four 24-Hour Reports, in violation of Government Code Section 84203 (4 counts). **Total Proposed Penalty: \$2,808.**
- 11. In the Matter of Committee to Elect Al Murray Berkeley City Council 2016 and Al G. Murray; FPPC No. 16/19757.** Staff: Assistant Chief Counsel David Bainbridge, Commission Counsel Ruth Yang, and Associate Governmental Program Analyst Dominika Wojenska. Al G. Murray was an unsuccessful candidate for Berkeley City Council District 3 in the November 8, 2016 General Election. Committee to Elect Al

Murray Berkeley City Council 2016 is his candidate-controlled committee. The Committee and Murray failed to timely file one pre-election campaign statement covering the reporting period of July 1, 2016 through September 24, 2016, in violation of Government Code sections 84200.5, subdivision (a), and 84200.8, subdivision (a). (1 count). **Total Proposed Penalty: \$2,500.**

12. In the Matter of Committee to Elect Debbie Ponte for Supervisor 2012, Debbie Ponte, and Robin Fleming; FPPC No. 17/0541 (Streamline Settlement). Staff: Commission Counsel Theresa Gilbertson. Debbie Ponte was a successful candidate for the Board of Supervisors in Calaveras County in the November 6, 2012 General Election. Committee to Elect Debbie Ponte for Supervisory 2012 was her candidate-controlled committee. Robin Fleming was the Committee's treasurer. The Committee, Ponte, and Fleming failed to timely file seven semiannual statements covering the reporting periods of January 1, 2013 through June 30, 2016, in violation of Government Code 84200 (7 counts). **Total Proposed Penalty: \$1,488.**

13. In the Matter of Kenneth M. Foley for Superior Court Judge 2014 and Kenneth Foley; FPPC No. 16/642 (Streamline Settlement). Staff: Commission Counsel Theresa Gilbertson and Program Specialist Grant Beauchamp. Kenneth Foley unsuccessfully ran for Superior Court Judge in Calaveras County in June 3, 2014 Primary Election. Foley was the Committee's treasurer. The Committee and Foley failed to timely file one prelection campaign statement covering the reporting period of March 18, 2014 through May 17, 2014, in violation of Government Code Section 84200.5 (1 count); and failed to timely file one semiannual campaign statement covering the reporting period of May 18, 2014 through June 30, 2014, in violation of Government Code Section 84200 (1 count). **Total Proposed Penalty: \$446.**

Statement of Economic Interests Non-Filer

14. In the Matter of Aaron F.B. Medina; FPPC No. 16/19737. Staff: Commission Counsel Christopher Burton, Political Reform Consultant Teri Rindahl, and Staff Services Analyst Katie Trumbly. Aaron F.B. Medina, a former Commissioner of the California Travel and Tourism Commission, failed to timely file his 2015 and 2016 Annual Statements of Economic Interests, in violation of Government Section Code 87300 (2 counts). **Total Proposed Penalty: \$2,000.**

15. In the Matter of Karl Jacobson; FPPC No. 16/31 (Streamline Settlement). Staff: Commission Counsel Ruth Yang and Political Reform Consultant Teri Rindahl. Karl Jacobson, a board member of the Orchard School District, failed to timely file his 2014 Annual Statement of Economic Interests with the County of Santa Clara, in violation of Government Code 87300 (1 count). **Total Proposed Penalty: \$200.**

16. In the Matter of Kirk Brown; FPPC No. 18/136 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Kirk Brown, as a Board Member of the Freewater County Water District, failed to timely file

his Assuming Office Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

Default Proceedings

Default Proceedings Requesting Commission Action

17. In the Matter of Brenda Lewis and Lewis for Water Board 2013; FPPC No. 16/322 (Default Decision – Final Notice). Staff: Commission Counsel Theresa Gilbertson and Associate Governmental Program Analyst Dominika Wojenska. Brenda Lewis was the successful candidate for the Monterey Peninsula Water Management District Board of Directors. Lewis for Water Board 2013 was her candidate-controlled committee. The Committee and Lewis failed to timely file seven semiannual campaign statements covering the reporting periods of October 21, 2013 through December 31, 2016, in violation of Government Code Section 84200 (7 counts). **Total Proposed Penalty: \$28,000.**

Notice of Intent to Present Default Decision and Order at Next Commission Meeting

18. 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 – Initial Notice). Staff: Assistant Enforcement Chief David 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); and failed to file two semiannual campaign statements covering the reporting periods 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.**

19. In the Matter of Roberto Reyes; FPPC No. 16/160 (Default Decision – Initial Notice). Staff: Commission Counsel Theresa Gilbertson and Associate Governmental Program Analyst Dominika Wojenska. Roberto Reyes served as a Planning Commissioner for the City of Richmond. Reyes failed to timely file his 2014 Annual Statement of Economic Interests, in violation of Government Code Sections 87200 and 87203 (1 count). **Total Proposed Penalty: \$3,000.**

General Items 20-27

20. Enforcement Review. Staff Adam Silver. In its February 2018 meeting, the Commission voted to proceed with a review of its Enforcement priorities and processes and the creation/revision of an Enforcement Procedures Manual that will be maintained up to

date and be made public through the FPPC's website. At its March 2018 meeting, the Commission intended to discuss and vote on [i] alternative methods of conducting, or causing to be conducted, this review, [ii] the nature and extent of the process review (its scope), and [iii] any instructions or next steps for commencing the review. After discussion and the receipt of public comment, the Commission postponed voting on such decisions to allow for the conduct of an Interested Persons Meeting that would allow for public discussion on these issues. The Interested Persons Meeting is scheduled for May 9, 2018. Commissioner Audero has requested that, to assist in May Commission meeting discussion, Commission staff create a detailed summary of that Interested Persons meeting and make it available for review and discussion at the May 2018 Commission meeting. Staff has confirmed that such will be provided. Summaries provided by the public through the public comment process also are welcome but not required. At its May 2018 meeting, the Commission invites public comment on, and will continue the discussion of, these issues and, if appropriate, will vote on the method of the Enforcement Process review, its scope, and the issuance of instructions (and deadlines as necessary) regarding next steps for commencing the review process, including but not limited decisions regarding the composition of the work group that will effectuate this process/priorities review.

Chair Remke: so then we are on to item 20 the enforcement review and I believe Adam Silver is going to bring us up to speed regarding the IP meeting on this matter

Mr. Silver: good morning Chair Remke Commissioners Adam Silver Commission Council I'm presenting on item 20 the enforcement review at its March 2018 meeting the Commission voted unanimously to hold an interested persons meeting to discuss the enforcement divisions priorities and procedures the meeting was held last week and was well attended and productive we received comment from members of both the California political Attorneys Association CPAA and the California Political Treasures Association the CPTA attorneys Chuck Bell and Steven Kaufman appeared on behalf of CPAA and support of the review Mr. Kaufman recommended that the review take the form of a task force and that the task force include two Commissioners two members of CPAA one member from a democrat law firm one from a republican law firm and an undisclosed number of Commissioned staff actually I was able to speak with Joe guar drama from the Kaufman law firm this morning he indicated they'd be open to really involving any member of the public who's interested in in this review on this task force Mr. Kaufman also noted during his comments that he recommended that the review culminate following the November election due to concerns regarding workload during the election year in terms of specific items of concern the CPAA requested greater flexibility in the resolution of enforcement cases including expanded use of warning letters but they also asked for greater predictability in regards to how the Commissioners treat specific classes of violations they also support an expansion of the streamlined program which as you know is already being pursued by the Enforcement Division and also an examination of the political Formax private attorney general provisions which Mr. Kaufman believes have been abused in the past CPAA plans that provide us with a comprehensive list of the enforcement related issues they have identified we've not yet received this list but once we do we plan to post on the Commission's enforcement review page Mr. Furchman a member of the California Political Treasures Association also commented in a

personal capacity he suggested that the task force include local treasures and political party officials he also noted that local committees are sometimes a scourge from participating in the political process for fear of offending what debut is a complicated reporting scheme and being subject to fines from enforcement in other state local agencies with that please let me know if you have any questions regarding the meeting or next steps for the enforcement review

Chair Remke: did this list of problems did we get any idea when this is going to come in

25:00

Mr. Silver: I spoke with Joe this morning about it he said that they have a rough draft and it'll be to us soon

Chair Remke: okay questions from the Commissioners

Commissioner Hatch: yes

Chair Remke: Commissioner Hatch

Commissioner Hatch: on the issue that was raised about the private attorney general provisions that's statutory right correct okayed were they looking for us to join with him making recommendations to the legislature why would they raise that do you think

Mr. Silver: it's it was a discussion point for the task force so something that they wanted to discuss with the Commissioners and other members of the regulated community on the task force so we could come up with a okay recommendation

Commissioner Hatch: okay

Commissioner Audero: I have some comments

Chair Remke: Commissioner Audero

Commissioner Audero: okay and since this was my agenda I'm just gonna move forward with it I would like to proceed and taking public comment along the way is perfectly fine but I would like to proceed with three sorry four items for decisions by the Commission the first one is I think we need to discuss and vote on the type of the work group that will undertake this and force my process review and I appreciate the the recommendation by by the IP meeting first I do want to say I would before starting on that I guess I miss thank you to the staff for setting up and participating in the IP meeting it was very helpful to have it set up and it seems to have gone very smoothly I didn't participate but I read the transcript so and thank you for providing a transcript of it and thank you to Commissioner Cardenas who's not here for having participated and I hope that it was insightful to him thank you also to all the participants who took the time to come forward and give us their thoughts they're very helpful and I think that they provide the basis for us to move forward and actually do something. So with that in mind here are the four things that I'd like to accomplish today. Number one, discuss and vote on the type of work group that's going to undertake this enforcement process review, number two discuss and vote on the

composition of the work group and the method by which the members of the work group will be selected, number three discuss and vote on the scope of the review that will be undertaken and the end product and then, number four provide any further instructions that we may determine are necessary to continue the process moving forward. so that's my goal and unless somebody has any objections to those four goals I'd like to just move forward with them.

Chair Remke: are there any other comments from Commissioners before we move forward
okay

Commissioner Audero: and as I noted I'm happy to have comments along the way so as to each of the four things that I want to accomplish at least okay so as to the work group I think it was very clear that the participants did in fact suggest a task force that would be subject to bag leaking I think that's very important and I think if Commissioner Cardinals were here I know that he would be very appreciative of that they made recommendations as to the compositions of the group and it was a little bit more detailed than what you what you said but generally speaking they made some recommendations I personally happen to agree with the concept of a task force I think that it opens up a discussion that would otherwise at least a forum for a discussion that might not otherwise be possible through our regularly noticed meetings it sounded like the Enforcement Division liked the idea of a task force and to me it seems very efficient. in my mind as I understand that the task force would have no authority to do anything on behalf of the Commission and I want to make that very clear other than to provide recommendations to the Commission either one recommendation or series of recommendations to the Commission who in turn would make any final policy decisions and act on those decisions. I also am in agreement with a suggestion that this be a long-term project as we clarified to miss West last month. there's no intention that this be a two-month project I personally had envisioned attending in December. I don't know if that's if that's workable given the election year but certainly not anything that has to be done right away. so that I'm certainly in favor of that so I would like to open the floor for any comments regarding proceeding with a task force subject to later discussion of the composition of the task force and then I'd like to make a motion on the workgroup concept

30:00 Mr. Silver: one comment like I mentioned I spoke with Joe this morning at the Kauffman legal group and he just wanted me to convey to the Commission that due to prior engagements that they're not going to be able to come today to provide comment but they stand by their their comment at the IP meeting that they support the task force its composition its purpose

Commissioner Hatch: I had a question on that it's just that triggers

Chair Remke: Commissioner Hatch

Commissioner Hatch: thank you I would would like to know there was reference made by I think to the principal speakers there that spoke about the previous task force recommendations that were made but not acted on and I would like to know what those recommendations were because they weren't really articulated and I sort of think that if all that work went into making recommendations before we should take another hard look at them see why not we should be maybe acting on those instead of saying put them back in the washing machine and run them

through one more time I would like to see them focusing on new issues and we can just get to this you know the stuff that was looked at and not acted on though maybe they it shouldn't be acted I don't know but I don't even know what they are and I want to know

Mr. Silver: and that's that seemed to be the operating plan moving forward Chuck Bell from Bell McAndrews is going to provide us with a list that would address the 2015 CPA a letter that was addressed to Chair Remke listing different issues that they had and he would lay out what issues have been addressed which haven't and then he'd also run through the McPherson report and indicate which ones which issues have been resolved in which have it and then also provides with a list about standing issues but we haven't received that yet I'm not sure if the Commission would prefer to have that list before moving forward or

Commissioner Hatch: no I don't think hold things up but I do want that stuff to be brought to the floor

Chair Remke: it is the McPherson report on the enforcement review page

Mr. Silver: yes the McPherson report and the the letter I mentioned from CPAAs on the review page

Chair Remke: okay I as far as comments about the process and the four items listed I know Commissioner hats just said he doesn't want to hold things up I mean I feel like to me talking about what the group should be the composition the scope the end product timelines and further instructions from my point of view it's hard to decide any of that until we see the list of issues I would think it is premature until we understand the scope of this and I feel like there's been more than adequate time to get that list to us reading the transcript for me it's hard to understand still to this day what the focus of this is or what the problem is so those are my comments

Commissioner Audero: I have some comments

Chair Remke: Commissioner Audero

Commissioner Audero: so I actually created a summary does my own summary but I'm happy to circulate it I have copies of what was discussed so that of the issues that they raised but and and theirs and they're quite there quite a few and I think that although not everything was addressed to the level of detail their Commissioner Hatch may have wanted I do note that one of the things that was said is this is a non-exhaustive list that can be fleshed out but generally speaking the review should be from the start of the process through its conclusion so to me what that is saying that this is a soup to nuts cradle-to-grave process review and I think that we should proceed along those lines I think that that you know they may be able to come back with a specifically detailed list to get the process started and I support that but I don't know that it is so unclear what they want to do I think it's very clear what they want to do they want the entire enforcement process reviewed and policies and procedures created and I am prepared to make a motion for that but again this is this is my agenda item so I want to proceed with it but if anybody has any comments on that I'd like to hear them

Mr. Silver: should the only comment I would make is that there's some issues that were brought up in regard to the 2015 letter and the McPherson report that actually had been resolved

Commissioner Audero: fair enough yeah

Mr. Silver: so it it's unclear as to whether some of the issues that were brought up are are outstanding issues that need to be addressed part of the review or not this

35:00 Commissioner Audero: I absolutely agree with you and I think that that was made clear during the public comment so I agree with you but I don't think that that limits the soup-to-nuts concept so just for the record I'm just gonna put this on the record again it's titled Commissioner Audero summary of the main 92018 IP meeting regarding the enforcement process review. for what it's worth do with it what you want I'm gonna give it to my fellow Commissioners. I'm attaching it to the agenda please here are two copies. do what you like but I hope it's helpful. so I would like to then proceed with the first motion which is I move that the enforcement process review be conducted through a task force the composition of which will be determined if this motion is successful that will organize itself and present recommendations to the Commission by no later than the December 2018 meeting unless a later date is authorized by the Commission

Commissioner Hatch: second

Sasha: Commissioner Audero

Commissioner Audero: Aye

Sasha: Commissioner Cardenas I'm sorry Commissioner Hatch

Commissioner Hatch: Aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: no

Sasha: the motion passes

Commissioner Audero: okay so moving forward with the next part which is the composition of the task force I noted that and is noted in my summary the participants of the IP meeting made suggestions regarding the composition and here's what I got a little bit just slightly different from what you got two Commissioners two CPAA representatives one from each political party one member of the regulated community as oh no sorry other members of the regulated community

as appropriate the public, staff, unspecified, working-level treasurer's who work with small community level groups, and then people from each of the state party structures who work with local clubs who raise funds, so some of this is a bit vague at least to to me and that could be very much because I just I I don't know what they're talking about in terms of small community level groups or clubs but that said I imagine that the intent was that we work through this during this meeting so I agree that the the list that they suggested should should be included to facilitate this discussion and certainly not as a final word on anything but as a starting point I created a suggestion of how this task force should be composed I do think that there should be voting members and non-voting members. I'll distribute this and well here I'll just distribute and I'll make it part of the agenda please if you could add it and here's one for you if you would if you care one for your table. so I think that there should be voting members and non-voting members. I propose one here the voting members that I would propose and obviously this is a starting point for a discussion. one representative from academia with expertise in campaign financing and lobbying, two CPAA a representatives one from each political party, one representative from each selected good government group and will have to decide which you know which ones, and I suggest that we consider the League of Women Voters of California, common cause, clean money, I don't I don't know if they're all appropriate but I'm putting them out there for discussion, or any other good government group. one representative from the California AG's office, one representative from the California political treasures Association, one representative oh and these by the way these representatives as I'm listing donuts we would offer to them the ability to join the task force if they want to they can if they don't want to they don't have to so one representative from the California Franchise Tax Board, one representative from the California Secretary of State, one representative from the California Association of City attorneys, and forgive me but I don't know with certainty I think that group is called the League of California cities, I could be wrong one former FPPC Chair, one former Enforcement Division Chief, and any other voting members that anybody can suggest. those are the voting members. I then think we should have non-voting members two Commissioners you know I think they should be non-voting members because at the end of the day we're going to vote on the policy anyway but you know one from each party selected by the Commission by a majority vote. the division chief for each of the FPPC executive divisions, legal ,enforcement, administrative, and External Affairs, or it can either be the chief or a representative from each division selected by the chief of the division, and then one staff member to provide twenty hours a month of administrative support to the task force selected by the executive director. and that last one I think is important because we can we voted unanimously to do this enforcement review and I think it would be pretty laughable if we then didn't support it with staff. and I think that 20 hours a month is not a whole lot it's five hours a week I would suggest that it doesn't have to be one singular staff member identified by name I think that as long as we provide some amount and we can talk about the twenty hours a month but as long as we provide some amount of administrative support to the task force I think that that's that's what I mean by that by that particular profile of someone who should be on the task force. so with that I open it up for discussion before I make a motion. when Commissioner Hayward had an agenda item he let her run it she kind of took it over but I was the Chair of nad hoc me yeah

40:00

Commissioner Hatch: is it okay if I speak now

Chair Remke: yes please

Commissioner Hatch: thank you I there's some suggestions for additions that I think that the county supervisors Association of California should be invited to select a representative they have County Council's that are members of their association I think that would be helpful

Commissioner Audero: what was the name of that

Commissioner Hatch: secondary supervisors Association of California CSAC

Commissioner Audero: thank you

Commissioner Hatch: and I think we should invite the California chamber of commerce to send a representative if they so was and also the California Labor Federation representing the labor element of the regulated community and I think we should invite the Institute of governmental advocates which is acronym IgA to send two representatives one Republican and one Democrat a

Mr. Silver: couple suggestions we'd also recommend having a representative from the County Clerk's Association someone who works with the county registrar's and county clerk's also I saw that we had one representative from CPTA they're also associated with partisan clientele so maybe it makes sense to have one from a democratic firm one from a Republican completely up to the Commission we were also discussing maybe having a representative from the tech community who can discuss disclaimers on social media that sort of thing I also have a roster from the Schnur task force that might be helpful for Commissioners take a look at to see what the composition was for that that's also I believe posted on the enforcement review page on our website I have a copy right here if the Commission would like to take a look at it

Commissioner Audero: well if you look at it quickly or is there any big group or missing that hasn't been added or slowly as

Mr. Silver: quite a few staff members on here there's also representatives from the local enforcement agencies who I think would be helpful participants in San Francisco and LA both just conducted their own enforcement reviews

Commissioner Audero: so are you are you saying just la in San Francisco or or every local enforcement

Mr. Silver: I think maybe a new representative is one representative from any of the local enforcement agencies would be fun but whatever you feel would be helpful

45:00 Commissioner Hatch: correct me if I'm wrong to agencies do their own enforcement work correct so they have something to contribute that's sort of unique in in their respect correct is that what you're getting

Mr. Silver: that's correct and they've recently gone through this process okay and we've also we had a we had a task force group that worked with with other campaign finance oversight agencies across the United States if you'd like to bring in someone from from Maryland from New York anyone else who has a different perspective on this you can do that as well so these are just all possible members

Commissioner Audero: we pride ourselves in California's being the trendsetters as I've heard from from miss Pathan from our Chair so I don't know that we need to bring in other states

Mr. Silver: it looks like they had a journalist's no

Commissioner Hayward: I have a question if now's a good time we don't have any way of including either staff or members of the various legislative committees that deal with our bailiwick is that on purpose what

Commissioner Audero: sorry so I guess that's a question to

Commissioner Hayward: assembly elections committee staff person maybe

Commissioner Audero: you mean from our the the committees that may be voted on in June is that what you're talking about

Commissioner Hayward: no the people across the street

Commissioner Audero: oh just only because I just didn't think of it so just add whoever wrote on it I mean just add it to the list and yeah yeah is it

Commissioner Hayward: well just it would be at the discretion of the committee but you know if they want to send a staff member over to talk to us yeah both the assembly in the Senate got it

Mr. Silver: and candidates

Commissioner Audero: aren't they kind of represented by CPAA a and an I mean that's fine I'm just but I don't know how we then select the right candidate they don't have an association but you know at the end of the day you know the task force is going to be subject to bagley-keene this is what they suggested and so anybody can come I just I think that we have to have a core group of people to to actually get some of the work done but everybody can come and participate it's obviously going to be open to the public and I just want to question about all these people that were that were suggested I imagine they are all voting members though I do have a question about whether the media should be a voting member so did Commissioner Hatch all the ones that you suggested are they voting members

Commissioner Hatch: I would suggest voting members yes

Commissioner Audero: okay and okay Mr. silver the ones that you suggested are voting members

Mr. Silver: sure I wasn't I was just suggesting them as people who would be interested in the process not so much how they would be involved

Commissioner Audero: right now we're talking about the composition of the task force sure so I wrote down the ones that you listed are you suggesting that they not be part of the task force and that they just be allowed to come I'm trying to

Mr. Silver: well I would defer to you as to whether you'd like them to be voting

Commissioner Audero: I understand but we have to vote on something so are you suggesting that to be added to the list or not and then we can vote on it

Mr. Lau: I call consistent with of this so if you want to add them to this that's fine I mean can

Commissioner Audero: you answer the question

Mr. Silver: could you restate the question I apologize you

Commissioner Audero: you gave us a list of people to be considered

Mr. Silver: correct

Commissioner Audero: we're considering the composition of the task force is that what you meant did you mean to add those people to the task force list to be voted on by

Mr. Silver: I meant to provide suggestions of the Commission and not to act on behalf of the Commission

Commissioner Audero: no no I understand that we're gonna vote on this I just want to know if you're saying should they be on the task force or in your opinion in your recommendation should they be on the task force or should they just simply be invited to participate as part of the public which they would be anyway

Mr. Silver: I think that's something I'd have to consider I don't have an answer to that at this moment

Commissioner Audero: okay okay

Commissioner Hayward: I could interject real quick I thought you were recommending that they should be at least approached about being on the task force and I think that's a great idea yeah so from this side the dye yeah there's that

50:00

Ms. Peth: Commissioner Audero just for the Commission's reference there are two organizations that are representative of media and journalism would be the California Newspaper Publishers Association and the other is the California Broadcasters Association I believe it's called Jay so that might those are groups you know and obviously nonprofits that always sort of but you know we represent a collective view maybe on from those perspectives especially like the broadcasters you know obviously representing television stations that are running a lot of the ads and things like that so they might be the type of group that can provide endpoint as well

Commissioner Hatch: they are stakeholders in the election process as for sure

Commissioner Audero: yeah that makes sense that makes sense to me okay any other thoughts before we take a vote all right you know s

Ms. West: is more of a clarification I noticed it has the two CPAA a members as voting members and yeah and one enforcement chief prior chief and one prior Chair with those be ones that are known not representing people before enforcement now as members of the CPAA a

Commissioner Audero: so that's a really interesting question because I think that this in my mind there is a potential for overlap I mean I think that you know you could have and I'm just saying this without I don't know if this combination exists but you could have a former Chair who is an academic right and so we tick both off by having one person instead of two so I think that there is that there's potential for overlap but I'm not sure what your concern you're raising

Ms. West: I'm asking for clarification yeah so if there's multiple members of the CPAA checking other boxes and they're all voting members then that's a perspective of the defense bar that I know there's other members of CPAA they're not in the defense bar but that would be multiple members of the defense bar that become voting members and then it's you're not going to get the unbiased recommendations and it seems like you're trying to get by this variety of people

Commissioner Audero: sure and that raises a very very good point and one of the things that I am going to do after we compile this and vote on this composition of you know profiles I'm going to move for a committee an ad-hoc committee to do to go out and actually find these people and I think they're going to use their judgment and making a recommendation I would hope they would use their judgment and making a recommendation to the Commission for a final vote as to whether it makes sense to to have this kind of overlap where we then just say okay then just one person to make sure that we're not weighted way too much on one side versus the other so but you raise a good point

Ms. West: thank you that would be my concern

Commissioner Hatch: yeah actually I kind of sort of have a contrary view to expect you know this bar to be able to come up with representatives that don't have any client you know interests virtually in like inviting them not to participate

Ms. West: oh no

Commissioner Hatch: I would I think use their discretion to try and nominate folks that they think would do the best job

Ms. West: I must not have said it very clear I was talking about the former enforcement chief and the former FPPC Chair because if those check other boxes as Commissioner Audero was saying then CPAA a would then have four votes for voting members if they also are the defense members of the defense bar is right so that would be my concern that then all of a sudden the task force becomes less of an equal representation of views to get to the policy issues

Commissioner Hatch: okay I at least understand what you're talking

Ms. West: thank you

Mr. Lau: if I may the one other comment that we had from the legal department is that a lot of this does overlap with the governmental principles and the subcommittee's that are being established to the extent that to commit to Commissioners are going to serve on this task force well to prevent that situation where we have two Commissioners working with galena working with enforcement on enforcement matters and at the same time two Commissioners working with the law and policy committee also on enforcement matters we start getting into we have four different Commissioners working with Galena and the enforcement division on enforcement issues so we would recommend that we take that into consideration and that possibly the two members of this task force would also be the two members of the law and policy committee assuming that moves forward at the next at the next meeting

Commissioner Hatch: questioned is it their vote or is it about their actually having access to information that you're concerned about

Mr. Lau: it's this the potential of relaying that information back and forth between doesn't matter serving the ad hoc and the to serving on the law and policy committee

Commissioner Hatch: so it doesn't matter whether they're voting or not voting it's the information exchange issue

Mr. Lau: correct

Commissioner Hatch: okay I understand

Commissioner Audero: okay so then I guess I'm going to make make a motion if nobody else has anything else to say

55:00 Chair Remke: so if gonna be asking for public comment just to be clear between each motion just Oh interesting case so is there any public comment before we make the next motion on this issue of the makeup at the taskforce okay seeing none go ahead

Commissioner Audero: okay

Commissioner Hatch: if I could I would suggest you perhaps don't have members of the Commission current Commission on the task force because we also they're also people are going to you know accept these recommendations and act on them and with the concerns about causing us bagley-keene I don't think it's necessary that we have to our current Commissioners on the task force quite frankly it's up to you but I just want to

Commissioner Audero: well it's not up to me we're gonna vote on this but I personally was a little surprised when at the IP meeting they suggested two Commissioners but you know because they've suggested them I put them on the list but now subject to discussion I personally would not mind if we did not have two Commissioners on the task force I don't know if anybody else has any comments on it okay then I'm going to make a motion so I've written all over my list and so I can't give it to you Sasha in any meaningful way so I'm just going to read it okay so I move that the task force that we just voted on that will conduct the enforcement process review be comprised of the following persons to be identified later and I'll speak to that in a moment as my next motion. okay voting members one representative from academia with expertise in campaign financing and lobbying, two CPAA representatives one from each political party, one representative from the California Assembly, one representative from the California Senate, one representative from each selected good government group which right now I am putting out as the League of Women Voters, common cause, clean money, because I haven't heard any others, one representative from the California attorney general's office, two representatives from the California political treasurer's association, one from each political party, one representative from the California Franchise Tax Board, one representative from the California Secretary of State, one representative from the California Association of one representative from the League of California cities, one former FPPC Chair, one former Enforcement Division Chief, one representative from the county supervisors Association of California, one representative from the California Chamber of Commerce, one representative from the California Labor Federation, two representatives from the Institute of governmental advocates one from each party, one representative from the California Publishers Association, one representative from tell me again please

Ms. Peth: I believe it's California Broadcasters Association,

Commissioner Audero: thank you, one representative from the California Broadcasters Association when a representative from the Los Angeles enforcement agency, one representative from the San Francisco enforcement agency, one representative from the county clerk's office, one representative from the tech community, as two non-voting members the division chief for each fppc executive division, and that is the legal division the Enforcement Division the administration division and the External Affairs Division, and I know that we have one open seat there or a representative from each division selected by the chief of the division, and the equivalent of 20 hours per month of administrative support by someone not necessarily the same person, to provide administrative support to the task force selected by the executive director and changed as needed during the course of the process review.

Commissioner Hatch: I second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: Aye

Sasha: Commissioner Hayward

Commissioner Hayward: yes

Sasha: Chair Remke

Chair Remke: no

1:00:00 **Sasha:** the motion passes

Commissioner Audero: okay so the next thing that I would like to discuss and then vote on is now that we have these profiles of people who are going to be part of this task force we need to go find them and I would suggest that we convene an ad hoc committee made up of two Commissioners run from each party political party to actually go find this slate of people, make recommendations to the Commission regarding the composition the task force with particular names, ensuring of course that these people understand that they will be performing without compensation or expense reimbursements, and then come back to the Commission with a proposal of who this task force should be made up of including who its Chair and vice Chair should be. and the reason I say that is that about the Chair and vice Chair is that this ad-hoc committee should have conversations with people about whether they're willing to serve in that capacity because it will take more work than the other task force members and so we want to make sure that we have that, at least as a proposal and I hear the concerns raised by Miss West that there may be an overlap and that that could skew the voting toward one direction or the other and so I would leave it to the this ad-hoc committee to take all of that into consideration as they bring back to us a proposal for the task force composition. and that's that's my opinion and I opened it to public comment before I make a motion.

Chair Remke: well first let's have Commissioners any comments from Commissioners on that proposal I would just comment that I doesn't seem to me that it needs to be an ad hoc committee this seems to be a staffing issue where staff can reach out to these people because it's really going to be up to them who they want to have be a representative of their organization or not so it's a lot of busy work of making these calls and getting someone to commit and then bringing it back to the full Commission to review anyhow the name so I would suggest that it just be

delegated to staff to bring back at the next meeting now any public comment okay hearing none so there's a motion

Commissioner Audero: yes I move that we convene an ad-hoc committee made up of two Commissioners and I would propose Commissioners Hayward and Cardenas subject to his agreement to to serve to go out and find the persons who fit the profiles that we just described for the task force and who are willing to serve and bring back a proposal to the Commission at the June 2018 regular not that June fourth but the regular I don't know the date of it but the regular June 2018 Commission meeting regarding the membership of the task force and its Chair and vice-Chair.

Chair Remke: is there a second

Commissioner Hatch: second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: Aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: no

Sasha: the motion passes

Commissioner Audero: okay then I would like to take up the forest

Chair Remke: okay so the forth motion

Commissioner Audero: yes so one of the things that we have discussed in the past is hold on a second oh sorry the scope of the process review I bet so the fourth issue is the scope of the process review as I mentioned I created a summary of the interested persons meeting for what it's worth and to the extent it's helpful it can be used it can obviously the task force will come back to us with a list of its issues. I which I understand to be soup to nuts every process cradle to grave so I believe that there's an interest as we heard from the task force. and a need for a review of all of the processes this makes sense to me especially since at the end of the day the goal is to end up with an enforcement procedures manual that will be made public and will be updated as

1:05:00

needed by approval of the Commission so with that I'm happy to hear any comments from the Commission or the public

Chair Remke: Commissioners any comments Commissioner Hatch

Commissioner Hatch: no I'm saying I just said no

Chair Remke: oh sorry public comment on the scope of the task force okay no comments on this task force all right excuse me I'm Jarrett

Commissioner Hatch: would you ask if there's anybody from the public even here

Chair Remke: I well I don't want to really call people out but I know there's two people here that are not on staff

Commissioner Hatch: okay good enough

Chair Remke: okay so there are two people here not on staff but nobody on this task force okay so there's a motion is there a second

Commissioner Audero: I haven't made the motion yet

Chair Remke: oh I thought that was the not no

Commissioner Audero: no no so soup to nuts

Chair Remke: that makes much more sense

Commissioner Audero: okay I move that once convened the enforcement review task force be and hereby is charged by the Commission with the task of conducting a process policy and priorities review of all of the Commission's enforcement processes top to bottom, cradle to grave, soup to nuts, with the end product being a written recommendation or set of recommendations for approval by the Commission regarding its processes policies and priorities to be presented to the Commission by the task force no later than its December 2018 regular meeting unless the Commission otherwise sets a different date. the Commission can then at that time decide how it will implement and make public these processes policies and priorities including the publication of an enforcement manual on the FPPC website that will be maintained and updated on an ongoing basis as needed.

Commissioner Hatch: second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: Aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: no

Sasha: the motion passes

Chair Remke: okay was that all your motions on this

Commissioner Audero: no actually well yep that's all my emotions but I do think that we need to give some instructions to staff on something that is outstanding and that is at the original meeting where we discuss this we identified some of the documents that needed to be placed on the website in the specific enforcement tab if you will that was going to be created and I appreciate the fact that the tab was created and that there are some documents on it but I also note that a lot of the documents that we discussed we're not on it and so I just want to remind tasks the sorry the staff and you know we can certainly discuss who is going to be and I think we should have somebody be responsible for this so that it doesn't fall by the wayside but I think that by our June regular meeting, and I don't know Erin maybe this is something that falls under you as executive director, but somebody needs to gather the training documents that were discussed, the investigators manual that was discussed, any other documents related to enforcement policies priorities procedures and it all I think that if I am sorry I thought for some reason that I had brought a list of what those were that we had discussed but it's easy enough to find the list by going back to the very detailed meeting minutes and I would like to see all of those documents gathered and put on that website I that tab of our website I think that will be very helpful to the task force I am mindful of the concerns that raised about privilege and trade secrets although I think that was facetiously raised because we don't have trade secrets but privilege that may preclude the disclosure of some of these documents to the public and so to that end I think that if in gathering these documents in this path you identify documents that should not be made public force and and there's some legal basis for that I would ask that you add ask the Chair to add to the agenda a closed session at which the Commissioners who own the privilege can can review and understand the legal basis for withholding documents from the public, and then make a decision and if there is a privilege attached whether we want to waive the privilege in favor of transparency and assistance to this process review. so that I don't think we need a motion I think we just need an instruction.

1:10:00

Ms. Peth: yes I understand so we'll review the transcript and make sure we have all the appropriate documents and if there's a privilege to share we'll address on

Commissioner Audero: privilege or any other reason to not publish a particular document that's responsive to the lists that we discussed and again I'm going to bring up trade secret because I do think it was a joke but just in case there is a contention that there are trade secrets I think that we should discuss that at the closed meeting

Chair Remke: okay anything else if you would Mr. Hatch

Commissioner Hatch: read a lot of stuff the last few days I'm not exactly sure we're on the agenda I saw it but there was a an enforcement manual that said superseded on it on the cover and my question went off in my head is I think it's relating to this subject it correct me if I'm wrong what it would dig it's superseded by

Ms. Peth: its superseded by the manual that enforcement currently is using which has been provided to the Commission I am not recalling right now on which meeting they're all kind of blending together but that was the the one that was posted it was posted at the request of Commissioner Audero I think it's from 2014 but we just wanted to make sure that I was abundantly clear because when people just google or you know search our website we just wanted to make sure it was clear that to the extent anyone's relying on that particular document it has been updated since that publication

Commissioner Hatch: I take it that other one is also posted it

Ms. Peth: correct again I Commissioner Audero requested that the 2014 version be placed with the I think was March meeting that's when it was discussed just so that it was with the minutes and people could reference it but the other current version is on our website

Commissioner Hatch: in the 2014 was adopted by previous Commission

Ms. Peth: I would have to ask Miss West but I don't believe that that was adopted by the Commission

Chair Remke: no she's shaking her head no

Commissioner Hatch: so should we legend that as a draft or I'm not sure was the original the one that says superseded on it was it adopted by a previous Commission

Ms. Peth: I don't believe it was

Commissioner Hatch: oh so okay all right thank you

Commissioner Audero: I have a comment

Chair Remke: Commissioner Audero

Commissioner Audero: so neither was adopted by the Commission right because we saw the current manual appear after six days of work suddenly and we didn't approve that manual so I would suggest to the extent that anybody's going to take a position that the 2014 manual was not approved neither was the current manual so I think fair is fair and you either take out the superseded because it hasn't been superseded by anything that the Commission has approved or you Makem both say draft or you add some legend that makes it very clear that the current manual that is half the size of the 2014 manual without any review by the Commissioners be marked as draft

Commissioner Hatch: well I think that would satisfy my concern I just I didn't know if we had something that we had adopted that replaced the one that said that it was superseded it's still not clear to me that I think was superseded

Chair Remke: right I think the point is that these enforcement manuals are used internally and have been used internally by enforcement staff for their day-to-day operations and so there was at least we know at 2014 but again was created internally through the chief and staff used and then miss West had been working for some time on updating that I think probably it's fair to say since she was named chief in 2015 - updated to current practices and as she stated at the public meeting it's a living document when processes change and priorities change they change it as well but it's also fair to say that none of those internal staff manuals have been reviewed or approved by the Commission in the past so that's just a to get us all on the same page

1:15:00

Commissioner Hayward: there's something for the future for us to figure out what to do

Chair Remke: right I think that's part of this task force as I understand it

Commissioner Audero: I just want to make sure that we are not misleading the public with respect to see I don't want to say value but I just want to make sure we're not misleading the public with respect to what our policies practices and procedures are and I think that that enforcement manual contained policy statements as I recall the 2014 manual had some that disappeared in the new manual and so I I am very concerned about that so I don't think that it's accurate to say that the 2014 manual was superseded I also don't think it's accurate to present the current version of the manual as something that is our policy procedures manual and so I think that we need to be careful with how that is put out on the on the website and I would suggest and you ask the question so I don't know if you have a motion Commissioner Hatch

Commissioner Hatch: I just can't figure out why well I would what was the current policy

Commissioner Audero: okay well then I would move that the legend of the 24th the quote superseded and quote legend that was placed on the 2014 manual without discussion with any of the Commissioners be removed and that we we can replace it with something that says you know in process of review and that we add that same legend to the current manual

Chair Remke: but it is superseded we could take it off but it is no longer followed or used and the goal was not to mislead people so I I mean what is the point of taking off language that is accurate

Commissioner Audero: so that's my motion

Chair Remke: is there a second

Commissioner Hatch: second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: Aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: no

Sasha: the motion passes

Chair Remke: anything else on item 20

Commissioner Audero: no thank you so item 21 Thank You Mr. silver

21. Closure letters in Enforcement Staff: Zachary Norton. Commissioner Audero's requested agenda description: "During the January 2018 Commission meeting, specifically during the discussion of the Lucan matter, the question arose whether Commissioners have the authority to set aside a closure letter. Specifically, the question was whether the Commissioners could instruct the Enforcement Division to re-write all or part of a closure letter with language that the Commissioners would approve, or otherwise rescind and issue it with that language. Our Legal Division did not weigh in during our discussion last month and the question was left unanswered. The Legal Division will present an impartial legal memorandum to the Commission with an answer to this question, including (1) legal authorities to support any position taken, if any; (2) an analysis of how to interpret the absence of legal authorities if that is the case; and (3) a recommendation on how to proceed in future similar circumstances with an explanation of whether that recommendation was reached based on the law or on best practices. In

addition, we will take public comment on the issue. Based on this the Commission will vote on whether to adopt the recommendation of the legal division as a go forward procedure, adopt another go forward procedure, or send this matter to the Attorney General's office requesting a formal opinion. This is an agenda item for FORMAL ACTION.”

Staff Memo

Chair Remke: item 21 is regarding the Commission authority to set aside a closure letter this was continued from last month's agenda item Zac Norton drafted the memo from legal division good morning Mr. Norton

Mr. Norton: good morning Chair and Commissioners

Chair Remke: so Commissioner Audero this is your agenda item do you have any questions for Mr. Norton

Commissioner Audero: questions and comments I think so thank you I have read the memo and I think it answers the wrong question the question that I had asked was can we revise a closure letter that in a matter where the decision has already been made to close this answer is the question can we affect the closure decision and that wasn't the question that was not our intent and I'll speak for myself that was not my intent this was in the context of the leucon matter and you'll recall that my concern was that I was dissatisfied with the language of the closure letter for two reasons it was number one inconsistent with language that was used in other closure letters and it appeared to be to have intended to cast a cloud over Mr. Lucan which I personally found objectionable. so as I read this memo I I can go through it with you if you'd like but I find that this memo is not doesn't provide the information that we need I do believe having done my own research, that that is because there is nothing that prevents us from changing the language of a closure letter once the closure decision has been made, and so if you'd like I'm happy to tell you why I think this memo is off or we can just move forward with in and I'm happy to answer questions of Commissioners who may have questions about why I think this memo doesn't answer the question or we can just move to a motion.

1:20:00

Chair Remke: any questions from Commissioners any public comment on this item okay so there's a motion on is it item 21 you're making a motion on

Commissioner Audero: yes and I'll have a motion for 22 but we'll take it one step at a time

Chair Remke: okay so your motion for 21 if we can hear the motion maybe then we'll have actually comments from the Commissioners our public

Commissioner Audero: sure I move that we direct the Enforcement Division that on a go-forward basis and until further direction from the Commission closure letters be limited to the language of closure letters also known as no action letters to one of the reason of the two reasons for the closure one the facts show no violation or two there is insufficient evidence to prosecute

and that no other language be interposed including language such as quote this is not an exoneration and quote or anything that in any way implies anything different than the two reasons stated above which by the way I will say I got from our own website which describes the purpose of closure letters

Commissioner Hatch: in one of the samples I think is the first sample of a closure letter it says we have found insufficient evidence which is very close to what you just said to support a finding that you violated the Act I think that last part is I would like to see part of your motion and I somewhere in the material I read last night that the examples of what a closure letter is it used that same phraseology so

Commissioner Audero: so on our website when you pull up case resolutions without finer penalty it describes three types of letters warning advisory and no action closure letters under no action closure letters it says if there is insufficient evidence to prosecute and no information sorry and no further information would be helpful or informative or the allegation has been disproven a case may be closed with no action with a no action closed your letter so that's where I got these two options because I think that is what makes it consistent with what is on our website that is what the public expects and so that's where I got that letter just for clarification language just for clarification

Commissioner Hatch: thank you that helps you but now I see the difference this is like describing the circumstances under what they do it I guess what I'm speaking to is that the content that you want to regulate in this example which was Calexico neighborhood neighbors of Calexico closure letter I can't tell when it used it on march of 20 March 26 2018 I find that I hate that prosecute unless it's we're talking about criminal activity so I think I like the phraseology that was in that letter says we have found insufficient evidence to support a finding that you violated the act I think that pretty much is an expression of what they were trying to do I realize it in the in the case resolution description it does use the term of prosecute but I don't I think that's in the context of what we're doing is civil stuff I think maybe it makes more sense to use the language if we're going to say this is what the language has to say it should be that so

1:25:00

Commissioner Audero: so so is that like a friendly amendment can if you would okay so let me let me and then restate the motion I move that we direct the Enforcement Division that on a go-forward basis and until further direction from the Commission closure letters be limited to the language of closure letters also known as no action letters to one of the two following reasons for closures one the allegations have been disproven or two there is insufficient evidence to support a finding that you violated the act and that no other language be interposed including language such as this is not an exoneration or anything that in any way implies anything different than the two reasons above

Chair Remke: miss West

Ms. West: certainly Galena West, chief enforcement, while it's true that the language that you got from the website is what it currently says we did not change that language in anticipation of the enforcement review but I did include in the packet the other letters that are no action closure

letters so I assume by your motion that these would no longer be allowed and so I would like direction on how we would handle these cases like for instance the second letter is the Kelly Hancock letter and it's a on march 8th you inform the enforcement vision that Mr. Saucedo had filed his assuming office s CI for the position prior to your referral therefore the Enforcement Division will not pursue this matter so it's a referral that got opened into a case but then the referring officer declined and said I'm sorry I did get the thing so with that

Commissioner Audero: See I would see that as the allegations have been disproven

Ms. West: but they did file eight

Commissioner Audero: but didn't they take it I don't understand the context of the so I you apologize you have it you you dealt with it and you have it very clearly

Ms. West: it's a referral from a filing officer on an assuming office sei but prior to the referral but after the deadline the sei was filed

Commissioner Audero: oh I see

Ms. West: and so we did not pursue the matter well then why isn't the insufficient evidence to support a finding that you violated the Act

Ms. West: because they did file eight

Chair Remke: so it was did they pull back the referral so to speak

Ms. West: they contact us and said you know we're all good please don't act on our referral

Commissioner Audero: I wonder if we then add some

Commissioner Hatch: we fine people for this the past

Ms. West: we fine people for not filing they're assuming office they get two contacts from their filing officer before it becomes a referral to us and then after we attempt to comply with them it falls either in mourning letter or streamline

Commissioner Hatch: okay

Commissioner Audero: so so your concern makes sense to me and I wonder if we then add a third reason that would be permitted which would be something to the effect of the complaint was withdrawn the referral was withdrawn though you know whatever was withdrawn

Ms. West: I would I would hope that you would make it more broad than that if it's going to be a formal motion because

Commissioner Hatch: you have a suggestion

Commissioner Audero: yeah such as what

Ms. West: such as the Enforcement Division will not pursue this matter further period

Commissioner Audero: without giving a reason as to why

Ms. West: so just to understand your motion the closure letters would not give the complainants any information on why the the matter has been closed it will only have these statements

Commissioner Audero: no no no so an fair question the closure letters and out and I have the leucon letter here handy I'm sure goes through like two or three pages of stuff right and you and you review what you looked at and what you consider and and then you have the and we are closing this type paragraph that's where I have a concern that would be the only thing that I would touch on that on those types of letters is that paragraph that gives the reason because I really do think that what was added to Mr. Lukens letter was inappropriate that's my personal view we can leave it at that but I think that if our website says under these circumstances people will get a no action closure letter that's what our closure letter should say and not you know add some language that does anything to create a situation other than say these two things or and we can agree on a third thing if you're saying you know we need something for when somebody withdraws our complaint I think I think that's fair

Ms. West: sure and and I think that this language does work because if you look at the Marian McWilliams water then this was a case where they mistake a local jurisdiction mistakenly handled a request for SEI as a California Public Records Act request which has different deadlines than requesting SEIs and so we issued this this no action closure letter again with the we are closing this matter without further action and that's why I would propose that as the third option because it fits into different scenarios which is why I give you different letters so you could see that

Commissioner Audero: I think I guess I guess I wouldn't have a problem with that I you know where I'm going where I have the problem right I have a problem with but this is not an exoneration I I you know I I think that undermines what the reason for the closure letters and so I wouldn't have a problem as long as it's very clear to you as a direction from the Commission that we don't want that type of language.

Ms. West: I received a message many months ago and I appreciate that so

Commissioner Hatch: I'm sorry I'm sorry if I could interject I found that one phrase to be prejudicial and unwarranted and it was not consistent with the language of other closure letters that you provided as an example so I think that was a case where somebody just kind of wanted to slap him or something I don't know I just it just it's not consistent or appropriate in my view

Ms. West: I understand and I also understand the the attorneys reason for putting it in there and because the case was a 50/50 case and and but I've received the message I I get that that won't be a sentence that we use moving forward

Chair Remke: so perhaps that could be the motion not to say you are not exonerated in a closure letter and leave it at that so that they have the ability and flexibility to write the facts and explain why something's being closed

Ms. West: right and I think that that was put in that letter not to be malicious but because that letter was specifically to go get legal advice and

Commissioner Audero: I think he could have said go get legal advice without saying you're not exonerated

Ms. West: I totally understand and I'm not saying that that I mean I understand what's going on I was just trying to give you the perspective that of the person writing the letter

Chair Remke: and Mr. Lucan has sought legal advice multiple multiple multiple times

Commissioner Audero: and good for him because I

Ms. West: and the complainants are unhappy that it wasn't prosecuted so well but it's hard to make everyone happy

Commissioner Audero: well but see see that to me that's a different issue right I respect completely your decision to close that matter I don't want to cross the divide I have no interest in second guessing that's why I think that this memo answered the wrong question I believe that you have the ability and and and the obligation to make the decision of when to close and what not to close I don't I have no intention of reopening that trying this case nothing of the sort I am here only my motion is only with respect to the language and I my motion stands with the exception that I'm happy to if you can tell me that third option of language I'll add it to the motion and then we can you know have a good discussion public comment and then take a vote

Ms. West: sure I'm and as I I said you can you can use the one that has prosecution in it which Commissioner Hatch has expressed a dislike about I think that it's for this third situation as we are closing this matter without further action I think that is the succinct statement that has been consistently used or the option is we will not pursue this matter further I think respondents liked the work closed in it but

Commissioner Audero: see I want to be careful with that I appreciate that but I want to be careful that that let that sentence doesn't become the sentence that then is used whenever you don't want to say the allegations have been disproven or there's insufficient evidence I don't want that third choice to because because in my mind this third choice leaves this weird question out there and a cloud over the person and and I I'm troubled by that because I I don't want well I've said it I'm troubled by the possibility that this third sentence would be used to to create a cloud

1:35:00

over the person just it's a little bit less than your not being exonerated but we're just closing it without giving any reason as our our very own website says there are two reasons for closing a case

Ms. West: right and I've acknowledged that there's a third reason for closing the case

Commissioner Audero: okay but I think that I think we should explain it we're closing it because somebody has withdrawn the thing well you know the the referral or the complaint

Ms. West: right and that's why I'm confused because I thought that we were just worrying about that final sentence whereas the explanation was still included so that's why I thought the final sentence being that sentence would be a consistent sentence that could be agreed upon as opposed to one that I could put in fact specific it does sound more like you're concerned with my judgment that I would be using this as some sort of catch-all and I think that by showing you all of these letters that has never been the case and I don't see that as an issue when when there are insufficient facts to move forward there just aren't or resources do not dictate moving forward it's not a game of getcha by sending the letter I know you guys feel that way about the Lucan letter and I'm sorry that you do but we we don't send out letters that give a black cloud we close cases and we no longer pursue them and that's it we aren't making a judgment on that case we are not pursuing it this is a violation so we're not going to say there's no violation the the district Oakland Unified district technically violated the Act but we're not pursuing it so those are the cases that it's you can't say we're not there's insufficient evidence to to find support of violation or or there is any kind of way of clearing them the act has a lot of technical rules that we don't want to issue warnings for we can because it's technically a violation of the Act we don't want to and I don't think that's what you're wanting us to do and so I think that that sentence I never had anybody that received a letter like that be confused about what it meant or indicate that they wanted more from that or different explanation they understand that we're not pursuing the matter and the case is closed

Commissioner Audero: okay

Commissioner Hatch: you use the term warning letter in that context of your explanation we were really focused on the no action letters not the warning letters

Ms. West: I totally agree and and what I was trying to make the point of is that two of these no action letters could have technically received warning letters because they had technical violations of the Act but we chose to just close with no action because of the mitigation de minimis violations and and trying to as as has been indicated take it easy on people and say hey you're aware so don't do this again that's the situation I'm trying to address

Commissioner Audero: given all of that I'm happy to add a third sentence as you suggested we are closing this matter without further action with the request that it not be used when instead you could say the allegations have been disproven or there's insufficient evidence to support a finding that you violated the act and with that understanding I'm happy to revise my motion to

include that third sentence and then all of that said we can certainly keep an eye on closure letters and if we feel uncomfortable we can come back to it

Ms. West: certainly

Commissioner Hatch: second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: Aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: no

Sasha: the motion passes

22. Letter Regarding Closure of Eric Lucan Matter, Case 16/284. Depending on the action taken by the Commission, if any, on agenda item 21, the Commission will review the language of the closure letter in the Lucan matter, matter 16/284, and will consider and vote on whether, and if so, how, to amend that letter consistent with the action on agenda item 21.

Eric Lucan Closure Letter, Case 16/284

1:40:00 Chair Remke: so now we're moving on to item 22 the no yeah 22 the letter regarding closure of Eric Lucan and matter case 16 to 84 which was closed on November 7 2017 and previously discussed and Commissioner Audero asked that be placed on the agenda again as Miss West noted earlier there have been some public comment letters so one or two yeah two with the addition of photos on one which have been posted and are part of the agenda item now so Commissioner Audero you asked for this to be brought back

Commissioner Audero: I did and my obvious intent is to have a revision of the leucon letter closure letter not as I said earlier to revisit your decision to close the matter that is certainly within your purview but I do want that letter revised so that it is posted and he of course receives the letter eliminating the language in that paragraph not that leave the entire letter as is but eliminating the paragraph no revising the paragraph accordingly and I'm very sorry but I had a

track changes proposal and I may have left it if you give me two seconds well we have public comment or any Commissioner comment on this I'll look for the specific proposed language but in the meantime I do have oh I found it I found it I want to so that everybody is on the same page I want to distribute to the Commissioners a copy of the Lucan letter and you have one in front of you I take it okay and then my proposed revisions in track changes I'm sorry that's in the packet the letter is part of the packet and here's a copy for you for your table I have extras do you need two

Chair Remke: okay well I'll start with my comments which I think go back to item 21 and addressed the issue of why this is inappropriate for adjudicators to reach in to the work of the prosecutor's office and direct changes we do not have a case before us we do not have this file before us this I think is outside our jurisdiction for to revise a case with complainants with the respondent and the case has been closed now for over six months not to mention that this there's been a motion twice to amend this letter that failed we're trying for the third time I'm not I think the message has been heard loud and clear that Commissioners do not like the language that this letter is this is not a letter of exoneration but in fact that's the reality it was not a letter of exoneration it was a letter stating out the facts and that it was going to be closed however based on the circumstances surrounding Mr. Lucan and his many decisions in Novato that there was concern if he assumed this was an exoneration that he wouldn't pause and seek legal advice as he's continued to do in the future so I think that the item 21 memo to us in our role as adjudicators of enforcement cases makes it clear to me that this is not something we should be doing on a particular case I was uncomfortable even directing the prosecutor who has discretion how to exactly where to closure letter because they are unique and she should have the flexibility that's why I voted no on that now to actually dig into a case that has been closed for over six months I think is highly inappropriate in our role any other Commissioners have comments on the proposed motion to amend

Commissioner Hatch: Madam Chair

Chair Remke: Commissioner Hatch

Commissioner Hatch: I have a firm believe that it's never too late to right a wrong having said that looking at the draft that was just furnished to us by Ms. Audero I would like to ask as a friendly amendment that in her red line that we strike the word prosecute and insert support a finding that you violated the Act which is the same language that was in that example letter that I base my concerns on in the earlier agenda item

1:45:00

Commissioner Audero: okay so I think we have a motion with the friendly amendment a

Commissioner Hatch: second

Ms. West: may I comment certainly with my hesitation in the former item was because of the the uniqueness of everything and and in each case and especially in complex cases and I struggle with this because you want to say there's insufficient evidence to support a finding that you violated the act and that was not the purpose of closing the case purpose of the case was to close

it so he could get legal advice that's what he told us he wanted to do that's what the community wanted him to do and it wasn't really about insufficient evidence to move forward we chose not to move forward to give a resolution to this community to no longer be an impasse so if it's if you want to say resources we didn't have the resources we didn't have he recused himself from every future decision and was asking to close the case to get advice so it wasn't in sufficient evidence to support a finding that you violated the Act I know that I got tangled up the last time that we talked I said the same thing five times but on the sixth time I think I tangled it because I wasn't reading from the letter and I stopped doing that because it was more conversational and I shouldn't have done that but the letter does not say he didn't violate the Act because we can't say he didn't violate the Act and we can't say there's insufficient evidence to support a finding that he violated the act because that is not the purpose of closing this case the purpose of closed in this case was so he could get advice and the community can move forward that's it there's nothing we're not hiding anything there's this language that everyone doesn't like and I understand that and we're moving forward but I feel very strongly that that is not an accurate statement

Commissioner Hatch: I just realized I can't tell what what the that phrase replaces the the sentence but was that was the prosecute wasn't in the original letter was it

Commissioner Audero: well what's in red is what I added it what's stricken out is what was taken out for this is not here's the paragraph

Commissioner Hatch: thank you oh you're not proceeding the matter oh I see there would have been a period there okay so let me understand from you if we just simply struck them what I consider to be a prejudicial comment and left otherwise your language the same is that acceptable to you miss West

Ms. West: as a Commission action unchanging the letter yes that would be more acceptable this is not a letter of exoneration dot portion

Commissioner Hatch: right in other words it would read as it does now ending with the phrase pursuing this matter period and then it would we would delete the phrase please note however that this is not a letter of exoneration and and then you set your new sentence would start with you may wish to request

Ms. West: I believe that doesn't change the the conclusion of the letter

Commissioner Audero: I just have a hard I have a hard time with this because I invite you to read what you said to us earlier I didn't I think that you're changing the story and i think i think that what you said to us was we directed him to go get advice and now you're saying he requested that we closes so that he could get advice look I think that I believe that the letter was mean-spirited I think it was inappropriate and I think that letter has been hanging out there for six months now and I think that we should fix it in a way that that lifts this cloud from above Mr. Lucan and I will tell you that I know that and you know for the benefit of Commissioner Cardenas who made the comment at that time that we're not in the business of protecting politicians or helping them clear their names or I'm paraphrasing and I'm sure that we can find

1:50:00

the exact language and I don't mean to miss-phrase so if I if I am I apologize but I think the record speaks for itself but my response to that and I think is relevant to the situation here is I think that we are in the business of making sure that the political reform act is enforced fairly not arbitrarily not capriciously not maliciously and I think that's what this letter did and I think that I think we should fix it in a way that makes it makes as makes that wrong a right or corrects that wrong that's my position

Chair Remke: so are you accepting Commissioner Hatches I guess latest proposed amendment to your amendment

Commissioner Audero: No

Chair Remke: so you're leaving it you want to make the motion and leave it at because there is insufficient evidence to find a violation of the Act is that correct

Commissioner Audero: because there's insufficient evidence to support a finding that you have violated the Act

Chair Remke: that's your motion despite just hearing from Miss West that that is not an accurate statement

Commissioner Audero: that's my motion

Chair Remke: okay is Mr. Lucan here to speak on his own behalf as opposed to us being advocating for him no he's not here anyone else from the public would like to speak on this other than the public comment letters we already received okay is there a second on that motion as stated to make maintain the language as insufficient evidence to find the violation of an act

Commissioner Hatch: I'll second it

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: no

Sahsa: Chair Remke

Chair Remke: no

Sasha: motion is tied

Commissioner Hatch: then I have a motion that I'd like to make

Chair Remke: Commissioner Hatch

Commissioner Hatch: I would just simply ask that we strike the please note however that this is not a letter exoneration and and this sentence would begin with you may wish

Chair Remke: so be under these circumstances we are not pursuing this matter period next sentence you may wish to request advice

Commissioner Hatch: exactly

Chair Remke: is there a second on the motion

Commissioner Hayward: I second

Sasha: Commissioner Audero

Commissioner Audero: as a compromise yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: aye

Chair Remke: no

Sasha: motion passes

Chair Remke: okay so that's item 22

23. Advice Letter A-18-002, Conflicts of Interest. On April 27, 2018, Eric Lucan sent an email addressed to all Commissioners regarding an advice letter he received. The advice letter and his email are on the agenda for discussion and to take formal action should the Commission decide formal action is necessary.

Eric Lucan Email

Chair Remke: we're moving on to item 23 which is a email from Mr. Lucan to all the Commissioners and this was thank you placed on the agenda I can't remember if it was it at your request Mr. Commissioner Audero

Commissioner Audero: oh no

Chair Remke: I think it was just placed on the agenda to see if there was any reason to discuss this further

Mr. Lau: correct this one okay

Chair Remke: so um Brian do you want to just let us know what we have here if anything and if there's anything we need to discuss or if there's any update on this issue of conflicts and the 500-foot rule which I believe this is not actually an issue about 500 foot rule

Mr. Lau: just comedy terms of that I think there is a pretty and inherent misunderstanding of the 500 foot rule Mr. Lucan is arguing that in the past the only thing that would be required is a examination of whether not the property was in the 500 this is not a matter of simply an interest in a piece of property this is a matter of a business interest as well and we've always had different materiality thresholds for interest in business as well so this would always have required a second review of whether or not the decision would potentially affected the business interest and in this particular letter we had a long-term stay hotel I believe the first one in the city that was in somewhat competition to his rental so three rental units so so it is a much more complicated analysis than just a it's easy enough fixed to do a 500-foot rule kind of situation is all I just want to point out on top of that as far as the moving forward with the content of interest project some sort of confidence bright-line recommendation it is still something this scheduled this tentative scheduled and made at this point we've just been really busy with the governmental principles I also believe this would be something that the law and policy committee would want to have some sort of recommendation regarding so as far as which direction we would go there are I mean to the extent that we're doing a 500-foot role that's a simpler fix to the extent that we're revisiting each and every one of the materiality thresholds that's a much complicated fix and there's other issues involved even and doing something simple like the 500-foot rule it was their rule for over 500 feet is there how strong is the presumption where you are within 500 feet there are multiple issues that arise so it's just something that we feel and probably should go through assuming the subcommittee's past is something that the law and policy committee would probably want to weigh in and at some point as well so it's just something that is on the table but has not been we haven't got there yet at the same time so I guess I'll just leave it at that well there's a question isn't it

1:55:00

Chair Remke: I think you already said this at a prior meeting but refresh my memory after all these some conflict rules were changed and there was some concern issue confusion you reached out to the regulated community correct

Mr. Lau: yes actually about a year ago we did reach out to multiple interest party California State Association of counties special districts Association League of Cities the particular trainees

association and Shawn Mason who was formerly with Liga cities who who had was kind of instrumental in the last set of conflict of interest and pretty unanimously everybody's position was we need some continuity in the rules at this point we've had a massive amount of revisions and there was a very significant consensus that you know adopting more and going back into them too deeply at this point is just going to cause even more mass confusion because of all the different even the fact that the revisions occurred over multiple years so at this point it's just very complicated situation and there's always that I do is it too soon to kind of go back in it's kind of significant matter as well so it's just all kind of another issue that's kind of on the forefront and consideration

Commissioner Hatch: if I could remind

Chair Remke: Commissioner Hatch

Commissioner Hatch: in a previous hearing I can't remember was two or three months ago I had invited legal to consider whether they would want to begin a process to consider whether we should return to more of a bright-line set of standards moving away from this like infinitesimally difficult process that we currently have it I know it's consuming a lot of time at legal it's causing I won't accuse of anybody I think it's impacting the ability to get the word product out because these are much more complex than they used to be maybe that's more productive I'm not sure but I think that's what I was inviting by inviting legal to consider whether they should make some recommendations back to us so and I don't expect this be turned on a dime but I think it's something that that we should be moving towards you know good thorough examination is whether this could be done in a better way

Mr. Lau: I do support incident at some point in time it's just a matter of when and I figured it into the work schedule as well

Commissioner Hatch: yeah I'm not breathing down your neck on this

Chair Remke: any other questions or comments from the Commissioners regarding item 23 okay anything from the public no okay

24. Commissioner Compensation. Staff: Matthew Christy. At its February 2018 Commission Meeting, the Commission moved to request that the Attorney General's Office review its 1977 advice letter and let the Commission know if the advice is still applicable in light of the language and Wage Order 4-2001, which provides that the California minimum wage law applies to state employees as of January 1, 2001. Staff has prepared a memo as required under opinion request process.

Staff Memo

Chair Remke: so item 24 is labeled Commissioner compensation at our February meeting there was a move to request the AG's office to review their 1977 opinion letter regarding the per diem compensation and whether or not that would change in light of the wage order pursuant to the

process legal has to do an analysis which is what they did here matt christie's here to answer any questions regarding the memo matt do you want to introduce yourself

2:00:00

Mr. Christy: good morning Commissioners Chair Remke my name is Matthew Christie and I'm here on behalf of the legal division to present the memo that the Chair just discussed on whether the 1977 AG opinion on Commissioner compensation still applies in light of wage order for 2001 minimum wage provisions applying to state employees wage order for 2001 does not affect the applicability of the AG opinion because it was not enacted in compliance with government code section 81012 the provision of the Act that said Sports sets forth the exclusive methods for the acts amendment the wage order for 2001 does not supersede government code section 83106 the provision of the Act governing Commissioner compensation accordingly the AG opinion still applies however because the AG opinion authorizes a reasonable proration of section 83106 is \$100 rate for each day that a Commissioner other than the Chair is engaged in official duties the Commission may harmonize its Commissioner compensation policy with the state's minimum wage laws if it so chooses I welcome your questions Commissioners and hope to be helpful

Commissioner Hatch: on that last part

Chair Remke: Commissioner Hatch

Commissioner Hatch: yes thank you could you give me an example of how you would harmonize that

Mr. Christy: sure I think there's several different options that would be available because of the way that wage orders work under the Labor Code so if you're only concerned with the current minimum wage that applies to the Commission

Commissioner Hatch: this is the theoretical where we now are below that there was the rate is above 12.50 an hour so the question then is how would you harmonize it if say the rate was \$14 an hour

Mr. Christy: if the rate was \$14 an hour I think the hundred dollar limit of section 83106 would still apply but you'd be able to adopt a reasonable proration of that hundred dollars

Commissioner Hatch: I want to know an example of how you would pro rate

Mr. Christy: so a hundred dollars divided by fourteen would be I'm sorry for putting myself in this position

Commissioner Hatch: yeah okay pick a number a wage number that was really divisible

Mr. Christy: if it were so 12.50 is the rate that is under the current Commissioner compensation policy if it were \$14 who would just okay that's great example thank a Commission Audero in that case it would be a maximum of five hours per day under a reasonable proration of \$20

Commissioner Hatch: I see I see so you think that would be reasonable okay at least I understand what you meant thank you

Commissioner Audero: I have some questions to your comments

Chair Remke: Commissioner Audero

Commissioner Audero: so I'll start by saying that I have mixed feelings about this memo first I'll say that I agree that the minimum wage applies and I am not sure that I agree that 83106 sets \$100 limit I think 83106 is a rate statute rather than a fixed pay statute but I think that's an issue for another day I think that's an issue that can be crossed by or addressed I should say by whatever Commission is in place at the time that the minimum wage exceeds 12.50 an hour because as I'm sure you've read 1182.12 there's a lot of conditions proceeding to the increase of a minimum wage and so even though there is a schedule and the minimum wage could exceed 12.50 by year 2020 it also might not so I appreciate the fact that there is the concession that the minimum wage does apply because it does I agree that it does

Mr. Christy: actually Commissioner if I could correct you on that I'm not sure that that's the conclusion reached in the memo from the legal division I think you have the ability to harmonize the Commissioner compensation policy with the state's minimum wage laws but I don't think that the memo concluded that the minimum wage law applies to Commissioners other than the Chair

Commissioner Audero: well so I have five comments about that and I'll get to that in a second but however we get to it I think it solves the immediate problem and because of that I think that I don't think we need to burden the AG at this point especially given that one day maybe we'll send him the letter that I think you're working on Mr. Feser with all of the other questions that we have and I don't know when that will be it would be nice that it would be soon but that to me is more important than this because this solves the immediate problem and I at least to my personal satisfaction I do think that it creates an incentive of inefficiency I think that what it does is you're you're creating the incent this interpretation not you personally but this interpretation is creating the incentive that a Commissioner is going to stop work in the middle of a task when he or she has hit a certain number of hours that add up to \$100 again I think you know I don't believe that that \$100 limit exists but again that's a question for another day and for probably another Commission so that's feeling number one feeling number two I would say that I find this to be far from an impartial memo I envision an impersonal memo very very differently if you think this is an impartial memo and I respect that you may I think then we have a disagreement as to what an impartial memo is I think this was a memo designed to come to the conclusion that the minimum wage doesn't apply and I think that to get their legal tenets had to be stretched beyond recognition we can talk about them I know you're making a face for the record but we can certainly talk about them because even though we may not agree or disagree on my position that this is that legal tenants have been stretched beyond recognition I use this as a speaking point for we really do need impartial memos from your division we really do and for me to have to take the time as a Commissioner and Mr. Feser you and I have had several discussions about this the idea is that the legal division provides us with what we need and I should not have to take the time to research your research to make sure that I got the right answer and I will say that

2:05:00

in the past and I'm not the only one other Commissioners have commented that the memos aren't impartial and we've had to go back and I would hope that one day soon we would get to a point where we would receive impartial memoranda from the legal division that said here's where I take issue with some of the things that you've said you take the position that 83106 was amended it wasn't 83106 was left intact if you read SB 3 it says an act to amend sections da-da-da-da-da relating to labor not at all mentioning 83106 so I think I think that is an improper statement to make

Mr. Christy: Commissioner if I could I would just point out that 83 I I see your point we're through I can tell you that the legal divisions goal is to provide objective information for to prepare the Commission to make the best choice it can I can tell you that is sincerely what I try to do in this memo and I'm disappointed you with that said 83106 is being interpreted here in light of other provisions that apply to state boards and Commissions the other 300 state boards and Commissions other than the Commission and I think the legal division looks at section 11009 of the government code

Commissioner Audero: go ahead go ahead

Mr. Christy: and it that provision which is the default provision for the compensation of state boards and Commissions indicates that unless there's an express provision of law that applies a different amount of compensation than no compensation that controls and in this case there is an express provision of law section 83106 so you were talking about how the wage order might amend or does not amend section 83106 but if you read the Supreme Court case Howard Jarvis versus Bowen

Commissioner Audero: which I have

Mr. Christy: I think that case from the Supreme Court gives a strong indication that there are only two ways to amend the Act and in that case the amendment in issue was whether it was an amendment by implication it didn't say expressly whether or not that law was affected and I think similarly here wage order for 2001 excuse me doesn't speak expressly to section 83106 I think that's the reason for our giving weight to its meaning or to its words

Commissioner Audero: well I understand that and I appreciate that distinction but I think that that distinction calls for a discussion about why even bring that argument in when you could have gone straight to amendment by implication so I think I think that this was I hope it wasn't but it appears to have been intended to lead us down a path of no you can't do what you want to do so I fair enough I will I don't want to I don't want to not allow you to respond because so go ahead

2:10:00

Mr. Lau: we did I present this as an unbiased decision analysis we have two very clear statutory provisions in the Act which states \$100 per day and in another session of the government code that says Commissioners and board members shall not receive any compensation except expressly provided by statute and we have to pretty clear Express statements in law that we do not believe the wage order trumps in any way so that's not this is intended as our legal divisions

interpret analysis to be provided to the attorney general's office if you decide to pursue seeking whether or not an opinion from the attorney general's office

Commissioner Audero: so I would say to you that government code 11009 has no application here because it says except as otherwise expressly provided by law members shall serve without compensation that doesn't apply to us you know it doesn't apply to us throwing that into this memo was I don't know why I'm just going to leave it at it is obvious that this doesn't apply to us so that's that 11564.5 also doesn't apply to us because it refers to per diem our statute does not have the word per diem there is nothing in the pra that says we are per diem employees that is what you guys want us to believe and that is not what we are so so I this is the problem that I have it's like all this stuff is thrown up to see what sticks or I will say what we may fall for and I think that's inappropriate this section says notwithstanding any other provision of law blah-blah-blah-blah-blah the Rachel be established at \$100 per day 83106 is the other right the other provision of law in 83106 is very different and to hear the comment that you just made about that we are to be paid \$100 per day is a misstatement of the law that is not what 83106 says 83106 says at a rate of \$100 for each day it's a rate statute for you to try to cubbyhole it into a fixed payment statute or a per diem statute I think is disingenuous and misleading and I and this is the kind of concern that I have I'm going to move on the state

Chair Remke: I would just say that my only concern

Commissioner Audero: I have the floor no I'm gonna go I have the floor

Chair Remke: well I wouldn't ask that you stop

Commissioner Audero: no

Chair Remke: attacking and insulting the staff and perhaps just point out your legal arguments without having to put motive on staff which is that already stated is not the fact they did a legal analysis they came to a conclusion if you disagree go ahead and go through the legal analysis that you disagree with without attacking staff and putting motive on them thank you

Commissioner Audero: I don't appreciate the interruption moving on the I will tell you that the mention of the 300 other boards also is a red herring in my opinion I think that if you look at the language of the statutes that provide payment for at least the boards that you are willing to put on here not the other 296, that's language that's completely different from 83106 and to make a compelling they yes I will give you a second but to say and to him not just imply but to actually say that we that the language that similar boards we really we have our own unique statute for good or for bad so go ahead

Mr. Christy: you raise a good point and I do think that 83106 is particular to the Commission but there are similar statutes that govern the compensation of similar boards are not similar boards but other boards that have policy demands placed upon them and I think four examples that are relevant are the boards that fall under the department of industrial relations which houses the depart the division of labor standards and enforcement's which actually enforces the wage orders those four boards have a provision that's more similar to 83106 than the default provisions

2:15:00

we were discussing earlier and talk about official business of that board as the standard for when they're hundred dollar rate kicks in I could tell you I've spoken with the legal counsel for one of those boards and confirmed that he had never seen the AG opinion I provided him the AG opinion as insight but the boards that they administrate under the Department of Industrial Relations are all paid based on a strict construction of their hundred dollar rate statute meaning they get a hundred dollars per meeting and I even went to the trouble of looking at what the members were paid per annum and it reflected that strict construction so in a statute that's similar to 83106 even the Department of Industrial Relations which interprets and administrates wage orders interprets strictly

Commissioner Audero: and and I appreciate that but that's where I beg to differ with you these four statutes could not be any more different than ours are says at a rate of a hundred dollars for each day labor code 72 shall receive \$100 for each day 75 D shall receive \$100 for each day 141 shall receive \$100 for each day 3070 shall receive the sum of \$100 for each day so that

Mr. Christy: May I correct you commissioner

Commissioner Audero: I'm reading it - let's bring the labor code then because then I cut and pasted it

Mr. Christy: I cut it and paste it at - but you just mentioned section 75 D and that it only said receive \$100 for each day if you read on in that sentence it says of their actual attendance of meetings of the Commission and other official business

Commissioner Audero: I have that I have

Mr. Christy: I'm saying that official business in this context is similar to engaging in official duties in 83106

Commissioner Audero: I don't think official business is the issue I just don't think it is

Mr. Christy: I just want to point out there was

Commissioner Audero: oh yes fair enough I have the entire language for all of them I cut off I'm happy to read the entire thing if you

Mr. Christy: me too

Commissioner Audero: but but the reason I'm explaining that the reason I cut it off is because there is a very big difference between at the rate of a hundred dollars for each day which is what allows the AG to come to the conclusion of the 1250 per hour right and at a rate of a hundred dollars for each day which doesn't in my mind allow for the proration that we're talking about so you know I have a concern that we are the presentation the memo is trying to is trying to portray us as being similar to things that were not similar to and that's my concern that's my concern I have a very big concern with the position of Commissioners are not covered under the minimum

wage mandate because they are not employees of the state of California and I would really encourage you to pull away from that position because I will tell you that you'll get pushback from me every single time we receive w-2s employment taxes are withheld okay we fill out state of California timesheets so I don't know how you get around that but here's the one that I really question how you get around and that is Mr. Feser's March 2008 memo 2018 memo that says you are employees of the state of California and so how we can how we can take this inconsistent position is troubling to me I will say that the I'll give you a second I just want to kind of close it with the the the statement that you know no court has ever found a Commissioner to be an employee of the state of California I think is misleading because no court has ever been asked I imagine that and I looked I imagine you probably looked and I think the conclusion is no court has ever been asked so to to make the leap from no court has ever been asked to and therefore you are not I think is improper that's like saying you know no court has ever been asked if Commissioner Audero is female and therefore she cannot be female I mean that's that's just a leap in logic that you just can't make and that to me is problematic in this kind of memorandum and so I would only encourage you to think a little bit more carefully about your choice of words and your and your legal arguments I mean please respond I know you're dying to and fair enough but that's my point on the we're not employees because we are employees

2:20:00

Mr. Christy: I appreciate your insights and I just want to reiterate that this was a sincere approach to answering this question and I apologize if it gave indication otherwise I understand the point that you just raised but I think the scope of the memo is really about whether four 2001 affects the applicability of the AG opinion and that's the point that I think really controls the day in from the perspective of the legal division

Commissioner Audero: fair enough and I don't disagree with you and I think that you found a legally supportable way to harmonize them and I appreciate that but I think that the other arguments were misleading and that's that's where I'm like you know what you could you know what you could have done you could have said amendment by implication is problematic still here we are if you we are left with two laws that either are consistent or inconsistent right and how do we deal with them and that's it and and I think it would have saved time and I think it would have saved a little bit of my personal angst in feeling like I'm not getting impartial memoranda and you know people may agree people may disagree and everybody has a right to do that but I also have a right to my feelings and that's how I feel this is not the first memorandum and I'll you know leave it to other Commissioners to speak up about how they felt if anything about this memorandum but the bottom line for me is I think that we don't need to go to the Attorney General on this today maybe somebody will go in the future on the issue of the hundred dollar quote-unquote limitation which I don't think exists so that's that for the legal division and thank you for the time that you took I appreciate it and thank you for your willingness to hear me out and to consider what I have to say that takes me to the issue of what is the status of our request for this goes to Ms. Peth what is the status of our request for information regarding whether Commissioners can physically I think you had raised some concerns about whether there is a a physical problem with timesheets of entering anything less than a day

Ms. Peth: so your question is what's the status of the actual compensation

Commissioner Audero: what's the status of your inquiry into it you've said you were going to talk to a whole lot of people and at one meeting you and I appreciated that you said that you had reached out to I can't remember whom I'm sure we can find it in the minutes but you had reached out to somebody and you were waiting to hear and then months pass and we haven't heard anything so I'm just hoping that you can tell us what the status is and that we can move this forward

Ms. Peth: absolutely we've been actually in contact with Commissioner Hatch and or Hayward who are the two Commissioners which this is relevant to in terms of submitting timesheets our administration division has been re-reviewing all of the timesheets that were submitted based and then comparing it to the policy that was adopted by the Commission they're in the process of processing the additional payments that need to be made that are consistent with the policy adopted and the way we've been doing it to address your issue about our your question about the the fact we can key it by our basically we can only key a hundred dollars a day as Commissioner Hatch suggested we just sort of rolling those over until we get to eight hour increments of \$100 so that those can be processed through the state payroll system and then they're a pursuant to the policy which sorry all right here it just says that there's if there's over 40 hours of preparation on any calendar month and needs to be brought back to the Commission so there might be a couple of meaning using a couple of the timesheets that have to be brought back I believe we're planning on bringing back that back for the June regular Commission meeting I think it's the 21st

2:25:00

Commissioner Hatch: on your explanation I received you know like a sort of a spreadsheet of how this means we would apply and I don't disagree with the analysis but what's not happening is even though that has happened it's still not being paid for whatever reason I'm not really sure because she's done the work and it's it's done this is not the 40-hour issue these are the ones who are not not in that forty hour issue and I thought she said we were waiting for legal and I'm not sure what that's about and I would like to footnote this with that when I was asked you know whether it was okay to go ahead and process my timesheets I said that I had asked legal to give me some guidance on what kinds of activities under this policy that we adopted you know the resurrecting of the original policy would these what would fall in and what would fall out of because when I was a new Commissioner I didn't know there were any this is okay and this is not okay so on the basis of the answers I went back through all my timesheets and I threw out a whole bunch of stuff and provided revised timesheets and then submitted them I'm just I think my question is what's left that legal needs to do that would allow her to process this stuff

Ms. Peth: well sort of - to answer your your statements and your questions the first is we are working on a memo or whatever you want to call it a guidelines that would be distributed to the entire Commission in terms of based on the policy adopted what are generalized items that would fall into official duties one example

Commissioner Hatch: this is the line of questions that I had asked Jack

Ms. Peth: yes and I believe he responded to you

Commissioner Hatch: well he did yes and I used those as a guideline to throw out a bunch

Ms. Peth: right so that's the sort of that would be kind of the baseline where we would start with those sort of examples of activities and sort of say yes this would be covered I know one question that's come up was whether the preparation of your form 700 Commissioners form 700 is would be considered official duties for purposes of the compensation package so

Commissioner Hatch: yeah there were actually items that he just didn't respond on he just said here's the ones I know you're in the clear on so that's what I went by

Ms. Peth: okay and so anyway we are going to be developing something so that there's continuity on the Commissioners yeah it's just off the top of my head it might make sense to bring that back to the Commission as a proposal if we have to bring back any of the other timesheets for approval and then the second I think this is so responsive also to your comments is that my understanding is that the admin division was in the process of processing the process of processing the payments that are owed and so I don't know if those just haven't Loressa could speak to that but that was my understand so I don't know if it just hasn't gone through this finish the state process yet

Ms. Hon: Loressa Hon chief of administration's so the question you have a Commissioner Hatch is that we did process what was sent to you per my email and because it's crossing fiscal year so I do not have the ability to issue the check in house I actually forwarded it to state controller office for them to we open the prior books in order to have the payment processed

Commissioner Hatch: okay so it wasn't legal internally we're talking about

Ms. Hon: no no it's already gone outside of fppc into another state agency for processing your check

Commissioner Hatch: okay thank you I appreciate that clarification

Chair Remke: okay so it sounds like we'll have guidelines and some possible statements brought back for June for further discussion but anything else on item 24 so I'm understanding that there's not a motion to send this to the AG's office

Commissioner Hatch: well I you know I switching back to that I had some things that we're concerning to me in this analysis and I don't I don't want to offend anybody but on the other hand I thought that I would still I'm waiting for an analysis is on the one hand you could argue this and on the other hand you could argue that then they don't match and I don't see those kinds of things and let me just tell you that when the Attorney General wrote his opinion that we've requested back in the 70s there was no wage order that applied to state employees okay so it was perfectly innocent for him to say what he said when the wage order was adopted it applied this to the state employees and to local government employees of all stripes there was all kinds of mash nations about whether or not they have to comply all the same kind of stuff that you argued in your memo the fact is that without repealing or amending any of those statutes or local ordinances or

collective bargaining agreements or anything else those wage orders were enforced and the courts have given a great weight even above a statute and that was sort of ignored and and when the wage order was adopted it was with the full knowledge that these other things were out there and it's not their job to go out and clean up everybody else's mess but they have the power to override all of those other things I saw nothing in this memo that dealt with it and that's that's all I had to say on this subject

Mr. Christy: if I could respond

Commissioner Hatch: sure

2:30:00 Mr. Christy: the would the wage order and specific provisions of wage order for 2001 are applicable to state employees or political subdivision employees of a political subdivision of the state but in the actual appellate cases interpreting that provision which is new since the wage order changed over in 2001 in the previous version of wage order for 2000 for instance it didn't apply to any public employees so that changed as of 2001 have you apologized that understanding is incorrect but what I'm trying to point out is just that the Act is special among states two statutes it's not equivalent with statutes like if you took to regularly enacted bills they would be equivalent but the Act is different because it was an initiative statute and that it controls its own amendment

Commissioner Hatch: many of these local provisions were also by initiative and also were set aside or overridden I think is a fair way to say

Mr. Christy: are you talking about state initiatives?

Commissioner Hatch: I'm talking I'm talking about voter approved initiatives governing the pay of city employees and county employees okay charter provisions which are like like our Constitution you know

Mr. Christy: right and in those instances like with respect to charter counties those are the times when the wage order has not been applied to charter county employees because the legislature doesn't have plenary authority over charter counties whereas in another case interval

Commissioner Hatch: I might remind you to look in the state constitution because there was a ballot measure passed to empower minimum wage to apply to government employees and nothing was mentioned in the memo about that it looked like sorry you start with where you want to be and then you kind of

Mr. Christy: I really apologize that that's how you've taken the memo Commissioner because I can guarantee you that I sincerely tried to apply the law and in particular 8 1012 - I think governs the situation I think to speak to some of the other

Commissioner Hatch: I accept your assurances I didn't mean to imply that you intended that but it just it you know lawyers argue and they you know present the facts that favor their client in this case your client would like a balanced analysis not one that pushes one side or the other

Mr. Christy: I completely understand and I and acknowledge that concern

Commissioner Hatch: thank you

Chair Remke: anything else on item 24 okay

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

Staff Memo

let's move to item 25 which is legislation Mr. Ung

Mr. Ung: good afternoon Commissioners Phillip Ung legislative director for the Commission in that this agenda item we are asked I'm asking that you support Senate bill 1239 which is a bill sponsored by the Secretary of State's office to make some technical and minor but yet substantive changes to the Act to prepare for the development and launch of a replacement Cal access system last or in 2016 the Commission supported Senate bill 1349 which directed the Commission or the Secretary of State sorry to build the a new Cal access system and have it launched by February of 2019 no later than December of 2019 we believe this position or this recommendation is consistent with that position you took in 2016 happy to answer any questions

Commissioner Hatch: I would move that we support a be SB 1239

Chair Remke: okay any questions before we take the vote

Commissioner Hatch: Oh certainly

Chair Remke: any questions for Mr. Ung

Commissioner Hayward: I have Mr. Ung so I do staff comments you describe the bill as replacing the current Cal access system there was one with data driven and paperless in the summary of the bill you also note that they would be changing the deadline for payment of the annual fee the \$50 annual fee April 30th I think the annual fee is charged contingent on it paying for Cal access because you need to have a justification like that to to charge fee at all for these filings and so if Cal access is being replaced what is the legal status of the annual fee at all

Mr. Ung: I believe and I could do some research on this and get back to you Commissioner Hayward is that the legislature the legislative intent is the system that is replacing the current Cal access is still Cal access it is still an on Cal access is obviously a DBA but it's an online filing a disclosure system for the secretary State's office

2:35:00 Commissioner Hayward: and so and so now the annual fee would be collected in order to pay for the new cal access or some kind of a

Mr. Ung: new version of the same system yes okay thank you

Chair Remke: somewhat unrelated but related question is just really where are they in the project and what's the likelihood of the December 2019 operational date

Mr. Ung: right I think they're gonna make an announcement soon they were shopping vendors I'm under an NDA so I can't really disclose everything but uh but they are I believe about to make an announcement hopefully in the near future about um news about vendors

Chair Remke: vendors and the timeline at perhaps or

Mr. Ung: the timeline I mean it's in statute that they need to have it launched by February 2019 and they can extend it out to December 2019 I think a lot of that depends on when the vendor sits down it really looks at everything and the timeline of whether or not they can meet those deadlines and if the Secretary of State so wishes he could obviously request the legislature move that statutory deadline if it doesn't look like they're gonna meet it

Chair Remke: all right thank you any other questions for Mr. Ung on ab 1239 I mean SB sorry is there a motion

Commissioner Hatch: I renew my motion and by the way as a point of order madam Chair there's nothing that prevents us from making a motion before you ask the public for their input

Chair Remke: no I understand that I just want to make sure that we're not there

Commissioner Hatch: yeah yeah I know thank you

Chair Remke: is there a second

Commissioner Audero: second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: Aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: yes

Sasha: the motion passes

Chair Remke: any other questions on the remaining items on the legislative report

Commissioner Hatch: yes I do

Chair Remke: Commissioner Hatch

Commissioner Hatch: first of all thank you very much for adding the budget bills and hyperlinks and they tracked the what he called the sponsorship notations were available and I would like to ask for one more I would appreciate it on the budget bills if you could put the our line item that applies on FPPC

Mr. Ung: okay

Commissioner Hatch: and it's the extent that it's not too much of an imposition to be able provide us an update on where we are currently in that process you know the budgetary process

Mr. Ung: all budget questions I'm there direct to Ms. Peth

Automated Message: we're sorry your conference is ending now please hang up

Commissioner Hatch: Madame Chair let the record show I didn't do that

Chair Remke: so someone from IT can come in here I'm guessing that

Ms. Peth: they're back over here

Chair Remke: sorry no he's not on I call it okay so we just had a number for him to call him but he did not call it okay so we're still live all right thank you

Ms. Peth: to answer your question Commissioner Hatch we have cleared I think I mentioned this last month we have two budget change proposals pending for four positions one position on the mass mailing the governor signed last year and three on the disclose Act which we've discussed a lot in this Commission and we have cleared both the Senate and the assembly so we don't anticipate issues with getting those positions obviously there's still there's conference committee coming up in the next few weeks and then the governor supposed to sign the budget but we should be good on those

Commissioner Hatch: is there something you left out there you might want to update us on relative to the Senate Budget Committee

Ms. Peth: yes we just went to the Senate budget summit excuse me the Senate Subcommittee on Tuesday morning I believe they have requested us to do more data collection and analytics to report back to the legislature on an annual basis so that they can better understand if we need more resources in terms of staffing

Commissioner Hatch: right but when you reported in lieu of Mr. Ung at the last meeting you said that you hadn't gotten to the Senate Budget Committee when in fact you had a hearing about

Ms. Peth: I believe I said we hadn't gotten through Senate Budget sub committee

Commissioner Hatch: let me see no you said we're waiting for the Senate that's out of the minutes page 72 I think

Ms. Peth: okay well we were waiting for the Senate we had I mean

2:40:00 Commissioner Hatch: you had a hearing your budget was discussed they asked that the ledge analysts report back on whether or not we were fine sufficiently funded in our budget request which is I think a lot of ole attempt on the part of the Chair of the budget subcommittee but you disclosed none of that

Ms. Peth: well at that point in time and I would have to go back and look at the time frame but we were still trying to figure out what they were even gonna be looking at and what they would be coming up with

Commissioner Hatch: there was no analyst report yet that was just requested they directed the analyst to do that you could have told us that last month you knew it you're hiding the ball somehow at least in my opinion it looked like that around all the dates I can go over them with you I've got my notes here on it it was real clear you knew that action had had been already been taken you didn't know what the ultimate result was gonna be what is

Ms. Peth: correct

Commissioner Hatch: what the analysts are gonna come back with but you could have told us for our knowledge I mean you know ultimately this is our budget and to the public they should know the irony of this is the Senate Budget Committee is a public hearing

Ms. Peth: correct

Commissioner Hatch: right but why hide it from us

Ms. Peth: well I apologize if it appeared that I was hiding it I was not I was trying to figure out what was going to happen and if I could just make one comment Commissioner

Commissioner Hatch: that's your job to hold back things just because you don't know how we're gonna react to it

Ms. Peth: I understand that I would just make one comment which is we are in a period of transition at this Commission staff is doing its best to take direction from this iteration of the Commission and there are I don't know how to phrase it but there are work processes that are changing and so I just want to say on the record we are doing our best to get you the information that you want in a timely manner and I think as we work through this we are taking direction from the Commission so I apologize and I will make sure that we in the future do better to make sure that you're in the loop

Commissioner Hatch: just let me take you back to August of last year I think it was when you announced that the governor had signed the budget and that was your budget report and a number of us spoke up and asked questions and wanted to know why we aren't involved in an earlier part of this budget process I think I specifically said we'd like to be able to help before you submit something to the Department of Finance with your request so that we can be you know cognizant and be in a place where we can help that never came and the next thing we talked about the budget was when I asked that question and so now obviously we put together a budget request we submitted to finance and so on and it got incorporated them in the in the budget bills but when I started to ask a simple question about where are we with respect to the budget and I even framed it you know that were small so we're sort of the tail end of the of the budget committee agendas you know have they began to take action and you dodged it and told us nothing about what was going on in the Senate and by the way for those who don't know about it the ledge analyst analysis came back fairly quickly and it's not very complimentary I'm sorry you know I have a limited amount of copies I can make for home and drag them up here on the plane so I can I have an email already to send to you Sasha that has a hyperlink to this report so anybody wants they could give you your card that you their card and we can email them a copy of the hyperlink

Chair Remke: so we can put it on the agenda under staff reports we can add the LAO budget just so it's readily available for anyone who's following along

2:45:00

Commissioner Hatch: so in the spirit of unintended consequences it appears that the Chair of the Senate Budget Committee was trying to help us and I don't know what the LAO actually found in terms of his interaction with our staff but it resulted in his wanting to require us to do a fairly thorough reporting each year of a five-year look back at a number of metrics and I got a wonder where you going to get the money to comply with LAOS stuff or we got to do another BCP attempt

Ms. Peth: so on those and I don't have the list in front of me but I believe there's five or six items that they're asking us to collect Thank You Phil so sub division A is all about the enforcement numbers and as you'll see in the when we get to the next item sorry the staff report on page two of Miss West's report to the first sorry its page three of this executive staff reports she added at Commissioner Audero's request the additional analytics that were requested

previously so in terms of subdivision A everything we already collect all of that information Commissioner Hatch and the only thing that we're working on getting also at Commissioner Audero's requests and others is the last item under that paragraph which says the average case pendency by category

Commissioner Hatch: could I interrupt you for a second

Ms. Peth: yes

Commissioner Hatch: here's the highlights of what the LA's found annual reports provide insufficient information for oversight the second one key workload metrics don't exist third one three bench few benchmarks against which to measure performance fourth no benchmarks or available data to measure case pendency and the fifth one I think was budget assumes reimbursement authority that never materializes and I assume that's the local government programs that we're we're talking about here and then they at the end they give you a list of reporting that you're going to have to do by the 10th of January every year

Ms. Peth: correct

Commissioner Hatch: that is a five year look-back of all this these metrics that they're looking for that they don't have and they want you to begin to create so that they can be satisfied as to whether or not we're funded appropriately or not and so looking at that it didn't take a rocket scientist to figure we may be a little stretched to comply with these LAO requirements that they're now been adopted by the committee I believe

Ms. Peth: yes

Commissioner Hatch: is that correct

Ms. Peth: yes

Commissioner Hatch: okay so should we be considering asking for another budget change proposal to cover the costs of our complying with this

Ms. Peth: well that's the other question I was trying to answer previously so um

Commissioner Hatch: I thought you were talking about some other stuff

Ms. Peth: no I'm trying to answer your question what I'm trying to say is that a lot of the stuff that they're asking us to collect is indeed information we already are collecting and so to answer your question I think that is an absorbable workload to do the data collection that they are asking in the reporting

Commissioner Hatch: all right

Ms. Peth: whether that means that the data shows we need additional positions to do programmatic work that's a different question but in terms of just the the ability to comply with the legislators request for more information I believe that's absorbable

Commissioner Hatch: well it's kind of a sad situation that when an effort to try and help us is turning around to burden us with more work but I do believe that we're not being budgeted adequately for what it is we're required to do and maybe if we were I don't know maybe better prepared for this this wouldn't happen and certainly I think not telling us did not make this any better because we could have helped you

Chair Remke: I have a different concern about the LAO report which is that I believe that it's stepping into the independence of the agency I understand they control the budget and they can ask for basic information but when they start using terms like benchmarks especially on enforcement cases obviously that's to be left to the Commission which is obviously a task that's being undertaken right now with the task force that was adopted and the like I know that I think it's innocent enough and his Commissioner Hatch said that the senator who started this process was perhaps trying to help us make sure we had sufficient funding I think the LAO analyst perhaps does not appreciate the independence of the FPCC enough and I have concerns when the legislature which is one of the bodies in which we regulate starts stepping into the area of our work in our benchmarks and the like so I would just note that as a concern regarding this report and I don't know if the other Commissioners agree and if they do if we should take any action regarding that aspect of this

2:50:00

Commissioner Hatch: madam Chair is that the messages you gave the LAOs office when they were over here asking for this information

Chair Remke: I did not speak to the LAOs office I did not have any involvement in this process

Commissioner Hatch: because that kind of an answer gets you less money

Chair Remke: I think fighting for our independence is always important and something we should be aware of

Commissioner Hatch: well a lot of people here that are dependent on a paycheck that work really hard to carry out the functions of this agency and to take the bowl on the nose with you know pinprick is not a great idea

Chair Remke: I don't think they're gonna be

Commissioner Hatch: Excuse me I'm not finished I reviewed our budget in the past and a substantial part of the part of the money that we receive in the state is not the money that we were required by statute by initiative to receive so we are at their mercy of their good graces and willingness to help us and that kind of an attitude that you just displayed is not a way to get there I'm for preserving this agency and to make sure that it can do its job as it's been dictated by the by the people and we should all be working hard to try and make that happen

Chair Remke: Commissioner Audero

Commissioner Audero: so since we regulate everybody I guess the question is are we taking the position that nobody can ask us any questions and I think that's absurd I understand the independence argument but the reality is that when we are going out there asking for money to run the organization and somebody holding the purse string says wait a minute let's make sure that this money that you're asking for or let's make sure that you have enough money but let's make sure that it's properly used I think it's a legitimate I think these are legitimate questions so that's my position on that because if that if it were the case that everybody who no one who we regulate can ask a question of us we can't ask a question of anybody and I I think that's not our charge that's that's number one I think the bigger picture out of all of this is the fact that this is the first that Commissioners are hearing about this this is dated May 7th so it could have been put on the agenda I think the agenda was set I think it was set on May 7th was the day I don't remember what day is today

Commissioner Hatch: today is the 17th this

Commissioner Audero: okay so seven the seven the seven and you know even to the extent that this was seen after the seventh I am it's disturbing to me that this kind of document and the hearing that occurred and the questions that were asked and the fact that we apparently and I don't know exactly what happened but it seems like we were asked questions that we didn't have answers to so much so that the LAO took the time to you know write something like this I think is disturbing and embarrassing and I would only encourage you to make sure that we Commissioners not just the Chair I did you have a conversation with the Chair about all of this I know you say that you're not sure cuz things are in a flux and I'm not sure that they are in a flux but because I think we've made it very clear that we want to participate in the oversight of the Commission so I would ask you miss Peth if you had a conversation with the Chair about these issues but not with us

Ms. Peth: yes I did have a conversation with the Chair

2:55:00

Commissioner Audero: okay so I want to take this opportunity to just remind everybody in staff that the obligation of staff runs to all five of us not to just the Chair and that I think that it's been very clear over the I don't know how many months we've been talking about oversight I mean certainly Commissioner oversight I would say certainly if you didn't get the message that Commissioners want to participate in oversight through the months that we've been talking about the governance principles I'm not sure how that is even possible but that said to the extent there was any confusion about whether Commissioners want information speaking for myself I can tell you that I want more rather than less and I would just ask that you keep that in mind as you're making decisions about who you discuss things with of this nature

Ms. Peth: I understand

Commissioner Audero: thank you

Chair Remke: okay anything else for Mr. Ung on the relation

Commissioner Hatch: yes

Chair Remke: Commissioner Hatch

Commissioner Hatch: moving on from that side excursion item two on your agenda Mr. Ung maybe six six four just interesting bootstrap this legislation is sort of taking the advantage of the fact that we have issued some old advice letters that I kind of think we probably should never have done the statute that they're amending was very clear it says you can't hire your wife or significant other on put them on the campaign payroll at all and we wrote some advice letters a long time ago I don't you know those people are still working here probably not that said in effect we turned that into a you can't pay them more than the going rate I'll say for simplicity's purpose that introduced and now this is popping itself up in this bill and now they're going to add some other members of the family and a more complicated thing about ownership of some part of a company or a vendor that does business with the with the campaign and by setting a standard of majority interest it in effect creates the opportunity to do what I call the visa the cashback Visa Card that is to say what under this bill would stop a excuse me a candidate from putting his wife or daughter uncle or father and father-in-law in a minority position in a vendor or two and then make sure that they do the bending and and that that money flows back to my other family member this bill needs a lot of work and I think we should take in a position of oppose unless amended we're taking the current law which says you just don't get to pay them anything and because of the advice letter that the author is relying on now we're saying oh well we can just pay him as long as not more than fair market value that introduces a whole level of complexity by the way that well I don't think we're prepared to increase our workload to figure out in each case now you got this standard that says oh well we paid them 30 bucks an hour and we think that's the you know the going rate and then you have to decide whether or not it was the going rate and instead of just saying you did or you didn't do it and the second provision that they put in there is this this concept that introduces the concept that we can't pay the vendor if the family member is a majority owner in that vendor which impliedly leaves open the door to say that if they own less than the majority it's okay so that becomes like a invitation to abuse the system

Mr. Lau: if I could comment I think there's a little misunderstanding of the existing law and what this does but I can clear pretty simply at this point it is prohibited to pay a spouse or a immediate family member but there is no prohibition outside of a spouse an immediate family member there what the advice that is allowed for was was a what the advice letters established was a limit that said if you hire somebody other than a wife or immediate family member you you could not pay them more than the fair market rate so actually what this is doing is basically codifying what we've already adopted which is if you hire anybody other than a spouse or a median family member which is defined as minors that live within the household then you can't pay them more than fair market rate that's ultimately going to be the test that we use regardless of whether or not this statute is adopted we've anything more than fair market rate would be beyond using your funds for a political legislative or governmental purpose it would be

3:00:00

essentially a gift to your funds to your family members so that's the standard that's always been used and this kind of codifies that

Commissioner Hatch: well we kind of our bit complicit in creating a concept about it's okay to pay something when the this the original statement of the legislators shouldn't be paying anything the question then was arisen about other relatives and a bill like this should just simply be saying applying the current standard and statute to all of the relatives instead of that creating these loopholes and invitations to create mischief

Mr. Lau: I agree I do not like the implication in the bill currently that suggests that if you paid somebody else you could pay them more than fair market value because that's not the standard we would allow for any kind of professional services or family members so I like

Mr. Ung: and that's part of it sorry Commissioner I just want to make one clarification we're not gonna just point that in paragraph D or section D of the bill the legislature tried to create some catch-all provision in the case of oh if they're not family members does that mean the bill says that you can pay paid more than fair market value so you have this weird circular loop within the statute it's not written ideally the way we would have written it but the history of the bill unfortunately kind of led it this way the bill when it was first introduced on a fee has to read the introduction version

Commissioner Hatch: I read all versions

Mr. Ung: he tried to originally just prohibit any payment to family members that wasn't going to fly with the the assembly elections committee partly because the Chair objected to it because the Chairs brother is his campaign manager and so there was a concern about well there are family members that are bona fide political professionals who do work and do you need to make a living and so they

Commissioner Hatch: didn't see that in any of this text of the bill

Mr. Ung: well its not in the bill

Commissioner Hatch: it's a fair argument

Mr. Ung: I'm trying to get you some of the legislative yeah how the discussion went in the in the committee so the bill did fail the first time when it was just rate prohibition and then the author went back and after asking us what our current standard is on market value we provided the the advice letters and they essentially crafted the legislation around the advice

Commissioner Hatch: yeah and it's okay

Commissioner Audero: I just have a question

Mr. Ung: yes Commissioner

Commissioner Audero: so I have not looked at this in the great detail that has Commissioner Hatch or all of you so I am not discussing at all the substantive question I just have more of a procedural question it sounds like this bill is codifying what's in our advice letter and now we're talking about taking an opposed position or I mean the idea was floated how do how do we take an opposed position when we have advice letters that say what this bill says

Mr. Ung: I guess from a process it depends on the the nature of the opposition why why are we opposed to it because opposing a bill doesn't necessarily mean you just suppose the concept you could oppose the way that it's written you could oppose the approach the legislators taken or its interpretation of it but it depends on the direction that the Commission gives us

Commissioner Hatch: My recommendation was opposed unless amended and this bill in its least current iteration goes way beyond even the advice letters we have nothing in the advice letters that talks about percentage of ownership and vendor and how that would be treated this is what this is way outside of anything you've ever advised in the past okay

Commissioner Audero: crickets does that mean ok

Mr. Ung: I didn't know there was a question there

Commissioner Audero: I don't think there is that's why I was jumping in

Chair Remke: so there's a motion to oppose unless amended did you want to give direction on the amendment because I'm not clear I understand

Commissioner Hatch: I my motion stands I would be happy to sit down with Mr. Ung and you know counsel him about my thoughts on it and ultimately have him figure out what he should be asking for translating this to the the author but in whatever form that advice is it's still opposed unless amended

Chair Remke: is there a second

Commissioner Hayward: I'll second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: Aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: no

Sasha: motion passes

Chair Remke: okay is there any more questions on legislation

Commissioner Hatch: yes

Chair Remke: Commissioner Hatch

3:05:00

Commissioner Hatch: I am three maybe 2155 Mullin seemed to me that when we were going through the process of putting together the regulatory changes that needed to be made the issues that are raised in this legislation are the very issues that were kind of contentious in the sense that the sponsors and the author were clearly believing that they were limiting our discretion with reference to setting arbitrary thresholds for advertisements and I think the message that I thought I heard passing back and forth was if you think we got it wrong go back to the legislature and clarified and this bill does exactly that and so were we just kidding them when we told them that we're being a bit disingenuous I think they're doing what they should be doing is clarifying that these thresholds are or not should not be there there to clarify their intent that there's first copy first impression first billboard whatever you're talking about is it meets the standard of being brought into compliance and so I would move that we support this legislation

Mr. Ung: madam Chair if I may respond to Commissioner Hatch i I my recollection of the discussion with Mr. Lang as it relates to when we were going through the regulation was about the quantity that was trying to be set and that if the sponsor of the bill and the author believed we got the quantity wrong that the legislature should clear up the quantity I mean

Commissioner Hatch: he had said that there was the quantity was zero

Mr. Ung: right

Commissioner Hatch: one and and we had a differing opinion and we we had our pre-existing regulations that stated quantities and so they go back to the legislature if that's what you meant now they're back in the legislature I tend to agree with what their their reasoning for having it that way so I'm moving that we support the bill

Mr. Ung: um and the reason why I wanted to respond was because the the current language of the bill which I assume you've read because you read all of this stuff is it doesn't set the threshold at zero it says that the Commission may not adopt any regulations that set quantity thresholds

throughout all of chapter four and so the concern was whether or not the legislature could limit our ability to adopt any regulation as relates to chapter four because of the existing statute

Commissioner Hatch: another way of saying no thresholds I took it to be that

Mr. Ung: mmm well you could take it to mean that but it's beyond just the mailing threshold I think that was at dispute and the regulation it's there are many many thresholds set by regulation throughout chapter four and under the 18400 series of the regulations and so and like staff concern in the comment was whether or not the legislature could prohibit us from adopting regulations with the presence of section 83112 within the act that grants us broad authority to a dog certainly any regulation within the title

Commissioner Hatch: certainly they can one bill can you know change the state's policy over what the previous bill had done so I don't think that that's really an issue it's just narrowing our discretion in that particular area I'm I would be amenable to making my motion to support if amended to deal with the technical issues you're talking about whether this would be restated in a way that's less prejudicial I think is the message I'm hearing but I think the theme of the bill is correct I think that we need to have less loopholes rather than more and I got the message very strong from you know the proponents of AB 249 that they wanted you know better accountability

Mr. Ung: absolutely and I don't want to modify your motion but I don't know if less maybe narrow their language to be more targeted for what it is that they're going after

Commissioner Hatch: yeah that's fine so support if amended is my motion

Chair Remke: can I get clarification on how it's the proposed amendment is

Commissioner Hatch: I I think I'd be happy to sit down with Mr. Ung and you know express what I think it means and that he can I think we already have a meeting of the mind there from what he's told me that that he needs to be more focused would like to work towards that

Mr. Ung: I'm not sure Commissioner Hatch is perfectly thinking

3:10:00 Chair Remke: I don't know if we understand I'm just trying to get what yeah

Mr. Ung: I think I believe that what the Commissioner Hatch is asking for is that we support if amended at the language be targeted towards the specific quantity threshold that Mr. Lang was discussing exact during the regulatory discussion and not necessarily a broad prohibition that we can touch hold within within the app yeah

Chair Remke: is there a second

Commissioner Hayward: I'll second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: no

Sasha: the motion passes

Chair Remke: Commissioner Hatch are there other

Commissioner Hatch: yes before

Mr. Ung: I thought I was gonna get off easy today Commissioner but

Commissioner Hatch: okay according to my notes I said what substantive amendments are we asking for on this build AB 2188

Mr. Ung: oh we weren't asking for substantive amendments I was informing the Commission at the time of the writing of this memo there were subset of amendments that would be negotiate between the author and other interest

Commissioner Hatch: oh I see I took that to mean with us

Mr. Ung: no I don't do that without direction

Commissioner Hatch: okay that's the answer I'm looking for thank you very much you get a gold star on that one

Mr. Ung: and that those amendments have now been amended into the current version of the bill

Commissioner Hatch: so they're in print

Mr. Ung: they're in print now

Commissioner Hatch: okay yeah I did this about four days ago so okay thank you that's good enough for me on and we'll take a look each new iteration of a bill is like a whole new different bill so we have to look at it and decide

Mr. Ung: and it's a pretty complex bill so I would take a real hard look at this

Commissioner Hatch: okay yeah that's all I have on that item thank you the next one I have is gray as item five the gift and contribution prohibition by an appointee while he's under consideration for ratification and I would ask that we support that measure I think it's good government

Mr. Ung: did you want to wait for Commissioner Audero

Commissioner Hatch: I may have to

Mr. Ung: I'm happy to answer any questions

Commissioner Hatch: I need to elaborate more on or would you like to give a rendition of what this bill seems to want to do

Mr. Ung: I might have to just read straight from my memo okay but I think that the author really wants to make sure that persons that are appointed by the governor that are subject to Senate or assembly confirmation the assembly admits that they do have some confirmation power but it's pretty rare but I just want to make sure that there include as well that none of those appointees can make gifts or contributions to a senator or an assembly member or any of their control committees during the time of that appointment period

Commissioner Hatch: right and I understand some history on that but on the assembly one that pops to mind is when we had a unforeseen vacancy as Attorney General the appointment that the governor made at the time had to be ratified by both houses and that's where that comes from why they have the assembly and the Senate

Mr. Ung: I think politically the assembly wanted to make sure they didn't look like they were attacking us although

Commissioner Hatch: I'm saying is there are specific absolutely sis's were constitutional officer vacancy occurs in the governor appoints a replacement it requires confirmation from both houses not just one that's why they included that so my understanding that we're instances where some folks were trying to curry favor in ways that were a bit offensive but if we're not illegal and this would close that loophole

Mr. Ung: I believe that that's the author's intent yes and to give some context to that bill for the Commissioners the governor makes approximately three thousand appointments or he has he can make up to three thousand appointments and the Senate considers about two hundred appointments a year so if you're wondering how big of a workload that is

Commissioner Hatch: right right well there's a lot of those appointment are not subject to confirmation

Mr. Ung: that's right yeah I believe we we found from the governor's office that seven hundred of the three thousand or sent a subject to Senate confirmation

Commissioner Hatch: you say are

Mr. Ung: are seven hundred of three thousand

Commissioner Hatch: so just update you this I had made a motion to support AB 2689 gray which is a gift and contribution prohibition for governor's appointees while they're going through the confirmation process

Chair Remke: is there a second

3:15:00 Commissioner Audero: hold on I have a question

Commissioner Hatch: mm-hmm

Commissioner Audero: and so um do I understand correctly that you were in agreement with that

Mr. Ung: agreement with his recommendation

Commissioner Audero: yes

Mr. Ung: I'm not sure I'm allowed to have a position

Commissioner Audero: I'm asking I'm asking you I'm sure you can have a position yeah

Mr. Ung: I don't feel comfortable doing that at this venture every go do it there partly because it's it's brand-new policy it's not something that we have a past position on and we haven't exercised authority over or something like this before there's not many individuals like I said 700 of the 3,000 or are appointed we've also believed that the the bill is minor and absorbable fiscally so wouldn't acquire any additional staff

Commissioner Hatch: well I had to tell you for my own personal experience when I was a lowly labor lobbyist and I'm writing in an elevator with the CEO of a major workers compensation insurer when he offered to bribe me in order to make this work comp deal go smoother these things do happen they have happened in the confirmation process and I think this is responsible legislation to see it and do something about it

Chair Remke: is there a second

Commissioner Hayward: I'll second

Sasha: Commissioner Audero

Commissioner Audero: I'm gonna have to abstain I just don't know enough about this

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: no

Chair Remke: I could bring it back next month for another discussion Commissioner Hatch anything else

Commissioner Hatch: yep item six

Mr. Ung: let's do the full tour

Commissioner Hatch: I'm sorry

Mr. Ung: I said let's do the full tour let's do

Commissioner Hatch: this is local enforcement and I my first question on my mouth are we somehow either officially or unofficially co-sponsors or encouraging the passage of a bill like this

Mr. Ung: no

Commissioner Hatch: okay this is a for the edification of the people who are wondering about this bill we have some specific legislation that's on the books that will allow us to in the case with like San Bernardino and I'd forget which the other you know the

Mr. Ung: City of Stockton and since docked and then was at Sacramento yes sir

Commissioner Hatch: we have individual bills that authorize those this bill would kind of strike all that out and say any local agency that wants to have us administer their local limits could do so and I'm not I'm not against this but I've had some life's experience that tells me this bill is not

very well written and doesn't have the safeguards it needs to have for for us to go full Full Tilt on this and I would also mention that in the LAOs report we kind of saw a little something there that you know that they're not convinced that we're getting what we should be getting out of the two the three contracts we have now and

Mr. Ung: Commissioner we only have two contracts that's we're not under contract with the city of Stockton

Commissioner Hatch: the the two I started with two and then I corrected myself and wrongly so thank you for pointing it out so we need an in subdivision D we need to see that we clarify that the terms must include full reimbursement for all direct and indirect costs or make it subject to the approval of the Department of Finance before we seal one of these deals in sub E we should add a hundred and eighty day notice requirement so neither side is caught with their pants down and sub G we should require approval of the department the financial terms of the Director of Finance again I've seen other state and local agency agreements that have gone awry because they didn't have proper safeguards and this is not just one city this could be potentially hundreds of cities and so I just keeping the softball going in support if amended as opposed to opposed unless amended if they don't get the message that I would consider coming back here and asking for a elevator message

3:20:00

Mr. Ung: I know that the sponsor California common cause is likely watching this hearing and they've been asking us what amendments can they take to alleviate any concerns the Commission may have and so I'm sure that they'll get right on it

Commissioner Hatch: okay that was standing that thank you very much I would renew my motion to support if amended a

Chair Remke: Is there a second

Commissioner Hayward: I'll second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: no

Sasha: The motion passes

Commissioner Hatch: I'll keep trying

Chair Remke: I just like to know in advance I can review it more closely

Commissioner Hatch: I again I want to thank you very much Mr. Ung I appreciate your efforts on our behalf and I also appreciate your willingness to spiff up your reports so that it's more meaningful to me thank you

26. Executive Staff Reports.

Enforcement Division. Galena West, Enforcement Chief

Legal Division. Brian Lau, Acting General Counsel

External Affairs and Education. Courtney Miller, Manager

Executive Staff Update. Erin Peth, Executive Director

Chair Remke: okay item 26 executive staff reports questions from the Commissioners

Commissioner Hatch: oh yes that's my other page Enforcement Division I had a few questions on their part of the report there is a if you would there was a provision in the report there near the beginning it says you rejected 29 what does that mean rejected in this context

Ms. West: Galena West Chief of Enforcement we reject for a variety of reasons but it would be we are discussing complaints in this context and so when a complaint comes in if it's not a violation of the Act or if it's not within our jurisdiction if it's there's a lot of people complaining about the content of ads right now which is not within our our purview or if it's something that is easily disproved before opening a case then we reject that

Commissioner Hatch: so you just send a letter rejecting there okay thank you that's what I need to know so

Commissioner Audero: Hold on I have a question about that how is that different from a closure letter because it sounds like the reasons that you just gave are what we talked about for closure letters with the exception of the jurisdictional issue

Ms. West: certainly rejection before it becomes that case is just not opening a case not assigning staff beyond the intake staff and myself and it's just the under the curse review within the first time that we have the case we can say there's nothing there's nothing to see here

Commissioner Hatch: right just before you don't even open a case rejection letter ok

Commissioner Audero: Got it thank you

Ms. West: the weeding out

Commissioner Hatch: okay and then and that might follow up on that where our case is not open and of course you just answered that okay then not too far below that you say 73 complaints open 16 for investigation and rejected 29 that's a--that's the same 29 you know I'm I'm a sucker for these statistics they don't add up so there must have been some other elements here that you know you got 73 complaints 16 you open the investigations and you reject 29 where do the others fall in a category of

Chair Remke: sometimes complaints can take a little longer so most of those would be they haven't been decided yet well

Commissioner Hatch: they just haven't gone to you either rejection or case opening

Ms. West: correct

Commissioner Hatch: Okay that's all I got

Chair Remke: any other questions for Miss West

Commissioner Audero: I just want to make a comment I want to say thank you I appreciate the information it was what I was looking for thank you

Ms. West: I'm glad to hear that

Chair Remke: any other questions from the Commissioners regarding the remaining reports

Commissioner Hatch: yes, a legal division

Chair Remke: okay Commissioner Hatch

Commissioner Hatch: advice letter summaries Damian Brower Esquire

Chair Remke: which which page are you on

Commissioner Hatch: well I just got in my notes like it looks like some of the

Ms. Peth: six of the executive staff report

3:25:00 **Commissioner Hatch:** it's in the staff report it's up to the legal division's item D advice letter summaries okay it's one of the early ones I read this and I talked to it you know I have to confess I'm not a golfer I don't know anything about it and I'm not appreciative of how people get excited about golfing so I had asked some friends of mine who have no knowledge of the Fair Political Practices Commission nor will they ever want to know anything about it about golfers and you know what's important to them and in this advice letter you have basically some developments

around two 18-hole golf courses and it seems that the people who've been vote on their sir would vote on this all live somewhere in this complex and part of this you know part of the question was you know they're basically gonna rip out 20 holes out of the 36 holes and put in other things and so I'm asking these golfers you know how does that you think that's going to affect your value of your property because they're there to golf every day and and look out at the greens and the you know all that stuff and get excited and when I asked them well how would you feel like if you put hiking trails and all these other things that are mentioned and in this analysis that that's terrible people that don't golf will come there and it's gonna degrade my property values so I kind of think that maybe we could have gone a different way on this advice letter and I'm not asking you to tear it up and start over anything but I'm just giving you like cautionary thing that maybe there was some reason to say you know what you guys maybe conflicted out so that's all I have on that

Mr. Lau: I do agree it was a close one thank you but I think it kind of felt down to I mean I'm hearing some direction on like the 500-foot rule so the larger developments were five more than 500 feet the golf course the other issue was you know they were closing there was two golf courses and they were maintaining one of the golf courses so was so there would still be the golfing community and the other factor that kind of played in was the idea that these golf courses really took up a very large portion of the city so the fact that so it'd be less of a chance it's gonna affect any one part property where three of the factors but I do agree this was

Commissioner Hatch: yeah the truth is that people who buy in a place like that they're golfers they're they're hardcore you know you know move into just like you wouldn't buy a home in the middle of a marina if you didn't like to you know boat right and so for them to go from I got two 18-hole golf courses and I can play one this day and another that day and this is like heaven right and all of a sudden I'm only gonna have one golf course instead of two and I got not only that I got these unrelated things that I don't care about you know hikers and campers and all that stuff and so it's gonna affect other golfers who might want to buy that home for them when they get too old to golf and so I just think there is an impact I just wanted to pass that on

Chair Remke: are there other questions Commissioner Hatch on the legal division report

Commissioner Hatch: no that was it thank you

Chair Remke: okay Commissioners other questions regarding the remaining reports okay those will be submitted

27. 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).)

Below is a list of items currently pending for future agendas and the Commissioners who requested them.

- (Hayward and Audero) Solicit Attorney General's opinion to clarify some of the advice provided by deputies attorney general at a presentation on the Bagley-Keene Open Meeting Act.
- (Hayward) Review the feasibility of holding a future Commission meeting in a location other than Sacramento.

Chair Remke: the last item is to propose future agenda items I know that it's been asked already John when you're gonna get that memo back to us is it June

Mr. Feser: yeah June the meeting and I consulted with Commissioners Audero and Hayward on this and I I'm likely to do the same at this level as well make sure that we don't the whole idea is not to get this kickback from the attorney general's office we want to get it right

Chair Remke: okay so that will be on June use Commissioner Audero you said you had another item you wanted for the next agenda

Commissioner Audero: yes thank you I do so I'll read it as I want it in the agenda and miss path this is gonna kind of repeat what we already talked about so I'm just gonna make it part of the agenda so this is about Bitcoin for the June 2018 regular meeting not the one in early June on June 4th 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 2 whether to issue a press release advising that the FPPC does not have a policy on crypto currencies as campaign contributions the purposes of this agenda item the Commission instructs the executive director to gather all existing research regarding Bitcoin including specifically the quote extensive research and quote cited in question 24 and provided to the Commission and the public as part of the agenda item to the extent that the executive director believes any such document should be withheld from the public the executive director will request a closed session for the June 2018 meeting for the Commission's for the Commissioners to review the legal basis for withholding such documents from the public and decide whether it's appropriate to waive such privilege in favor of transparency

3:30:00

Chair Remke: okay any other items for future agendas

Commissioner Hayward: excuse me my suggestion that we review the feasibility of holding a future Commission meeting in a location other than Sacramento it's still a live one for me and I would like us to look into that

Chair Remke: okay Erin can you report back at the June meeting as to where and when that's possible thank you

Commissioner Audero: I have a clarification question on that so Commissioner Hayward did you intend that to be an action item or do you just want a report

Commissioner Hayward: I would like to be able to vote on doing it I think

Commissioner Audero: absolutely yeah

Chair Remke: any other future agenda items hearing none I move to adjourn

Commissioner Hayward: I second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: Aye

Sasha: Commissioner Hayward

Commissioner Hayward: Aye

Sasha: Chair Remke

Chair Remke: yes

Sasha: motion passes

The meeting adjourned at 1:32 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
June 11, 2018