



(Approved August 17, 2023)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, June 15, 2023
10:00 a.m.

Present: Chair Miadich, Commissioner Baker, Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
Christopher Burton, Acting Chief of Enforcement
Dave Bainbridge, General Counsel
Shrdha Shah, Chief of Audits and Assistance
Jue Wang, Acting Chief of Administration
Lindsey Nakano, Senior FPPC Legislative Counsel
Julianna Contreras, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:10 a.m.

1. Public Comments for items not on the agenda.

Steve Petzold would like to see the regulation regarding independent expenditures made by a recipient committee have a presumption of coordination if the donor committee makes a monetary contribution directly to a controlled or primarily formed candidate officeholder committee. He would like status updates on the following cases 2022-00366, 2020-00373 and 2018-01386.

2. Closed Session.

The commission adjourned for a closed session at 12:30 PM and reconvened at 12:50 PM.

3. Approval of Commission Minutes.

MOTION: To approve the April 2023 meeting minutes. Moved by Commissioner Baker, seconded by Commissioner Wood. The motion passed 4-0.

4-5. Pre-Notice Defaults.

Commissioner Wilson asked about the total proposed penalty of \$14,000 in the matter of Jose Pech; FPPC No. 19/1407. Chris Burton, Acting Chief of Enforcement, explained this matter is a pre-notice of the defaults presented to the commission for adoption. Mr. Burton will be discussing this further at the next Commission meeting.

6. *Winuk* Advice Letter I-23-009.

Brian Lau, Assistant General Counsel, presented a PowerPoint presentation discussing the *Winuk* Advice Letter, No. I-23-009. During this presentation, Mr. Lau discussed that honorarium was banned since 1990, when state and local elected officials were banned from receiving an honorarium from any source. In 1994, the honorarium ban was expanded to other local employees. Under the Act, an elected or local official may not accept any honorarium which includes payments for any speech given, an article published, or attendance at certain events except for earned income for personal services customarily provided in connection with a bone fide business. This exception does not apply to any business if the sole or predominant activity of the business is making speeches.

Chair Miadich makes the point that this may be a statutory problem. Commissioner Baker notes that all advice letters with similar fact patterns should be noted in the memo in the future. Chair Miadich made a motion to direct staff to go back to the regulations and to identify whether there are alternative ways to define any portion of this regulation to allow someone with a bona fide business who speaks and is compensated for that. If in the case Mr. Lau cannot come up with any recommendations, then Mr. Lau would report back to the Commission that a statutory change is necessary. Commissioner Wood discussed the idea of exploring the term “teaching” and how you teach to share acquired knowledge through speaking. Mr. Lau will look into all regulatory options.

MOTION: For staff to explore regulatory options allowing for some speech activity for bona fide businesses within the honorarium regulation. Moved by Chair Miadich, seconded by Commissioner Wilson. The motion passed 4-0

7. Adoption of Proposed Amendments to Regulation 18531; Return or Attribution of Excessive Contributions.

Toren Lewis, Commission Counsel, presented a PowerPoint presentation on the proposed amendments to Regulation 18531. During this presentation, Mr. Lewis focused on revised amendments to remove the definition of “actual knowledge” and clarify how to report a returned or attributed excess contribution. Commissioner Baker had a question regarding a provision of Regulation 18531(a) requiring a committee

to seek affirmative confirmation from the donor with the exception of a primary to a general election. Mr. Lewis confirms that statute 85319.5, subdivision (d)(1) provides that a committee may, in accordance with any regulations, request the contributor attribute in writing a contribution to a different election. Commissioner Baker requested clarification on the word “intermediary.” Dave Bainbridge, General Counsel, clarified the term “intermediary” is commonly used to indicate a committee receives a contribution and then passes it along.

MOTION: To approve Regulation 18531. Moved by Chair Miadich, seconded by Commissioner Wilson. The motion passed 4-0.

8. Proposed Repeal, Adoption, and Amendments of Levine Act Regulations (18438-18438.8, 18705).

Kevin Cornwall, Senior Commission Counsel, presented a PowerPoint presentation of the proposed regulations addressing Section 84308, as amended by SB 1439. During this presentation, Mr. Cornwall addressed the proposed amendments for each regulation including the feedback from comment letters and Commissioner comments from the Law and Policy Committee meeting. Commissioner Baker commented she would like a follow-up on the strong mayor provision since there are 5 strong mayors in California without delaying the regulations. Dave Bainbridge, General Counsel, clarified that it is not possible to exempt the strong mayor because the FPPC does not have statutory authority. Mr. Cornwall added he is currently working on an advice letter regarding this matter.

Public Comments

James Stevenson, past president of the Political Attorneys Association and Beverly Hill, State Building and Construction Trades Council, and multiple agencies groups supported their suggestions.

MOTION: To approve Regulation 18438. Moved by Chair Miadich, seconded by Commissioner Baker. The motion passed 4-0.

MOTION: To approve options 1 and 2 of Regulation 18438.7. Moved by Chair Miadich, seconded by Commissioner Baker. The motion passed 4-0.

MOTION: To approve option 3 of Regulation 18438.2. Moved by Chair Miadich, seconded by Commissioner Wood. The motion passed 4-0.

MOTION: To approve the entire Levine Act Regulations. Moved by Chair Miadich, seconded by Commissioner Wood. The motion passed 4-0.

9. Adoption of Proposed Amendments to Regulation 18361.1.

Dave Bainbridge, General Counsel, presented the adoption of proposed amendments to Regulation 18361.1. Chair Miadich asked what happens if an individual requires additional time and if it is possible for an extension without violating this regulation. Mr. Bainbridge clarified that a subpoena can't be issued before 21 days but certainly, an extension could be granted upon request.

Public Comments

KC Jenkins on behalf of CPAA. We are overall in favor of the proposed changes to Regulation 18361.1 but would increase the waiting time to 30 days before an administrative subpoena can issue, instead of the proposed 21 days. The subject of the investigation needs adequate time to retain counsel, who then needs time to investigate and review the records.

MOTION: To approve Regulation 18361.1. Moved by Commissioner Baker, seconded by Chair Miadich. The motion passed 4-0.

10. Adoption of Proposed Amendments to Disclose Act Regulations (18402, 18450.3, 18450.4, 18450.6, 18450.8, and 18450.9).

Erika Boyd, Senior Commission Counsel, presented the adoption of proposed amendments to the Advertisement Disclosures. The amendments are minor changes correcting cross-references and most of them are necessary for the regulations to not be in line with the underlying statute due to changes made by SB 1360 in 2022 to the Disclose Act portion of the statute. Regulation 18450.9 will retain subdivision (b), requiring a link or a tag to a committee's page for paid advertisements posted on social media by third parties. Regulation 18402 inserts a reference that now permits shortened committee names in certain instances. Regulation 18450.3 inserts a reference regarding the disclosure of Top Contributor names. Regulation 18450.4 corrects a cross-reference in subdivision (b), adding subdivision (c) defining television to include advertisements viewed via streaming TV and connected TV technology and inserting a new subdivision (d) related to the Top Contributor's name delineation. Regulation 18450.6 inserts a reference to the section permitting a shortened committee name. Regulation 18450.8 corrects a cross-reference in subdivision (a) and removes an unnecessary cross-reference in subdivision (b). Regulation

18450.9 corrects a cross-reference in subdivision (a), corrects a cross-reference and subdivision (b) and adds subdivision (c) regarding disclosures for candidates and political party electronic media ads.

MOTION: To approve amendments to Disclose Act Regulations. Moved by Chair Miadich, seconded by Commissioner Wilson. The motion passed 4-0.

11. Legislative update.

Lindsey Nakano, Senior Legislative Counsel, presented updates on PRA-related bills, including three Commission-initiated bills. Commissioner Wilson asked about AB 37 and the rationale for the prolonged period before reimbursement that would be required. Ms. Nakano answered that the author is giving them more time to wrap things up. Chair Miadich asked about the 5-year reimbursement that would apply to the current rules. Dave Bainbridge, General Counsel, added to the discussion that after an election the candidate has 24 months to wrap up a committee and the candidate would have to reopen the committee, which requires a request to the Executive Director of the FPPC. It's used in the context of someone getting a refund to the committee and they need to be able to open the committee and distribute funds in a way that's permissible under the statute for surplus funds.

MOTION: To approve support position for AB 334. Moved by Chair Miadich, seconded by Commissioner Wilson. The motion passed 4-0.

MOTION: To approve support position for SB 681. Moved by Chair Miadich, seconded by Commissioner Wilson. The motion passed 4-0.

Public Comments

John Moffatt, American Council of Engineering supported AB 334.

12. Executive Reports.

The Executive Staff Reports were accepted as submitted.

13. Commissioner Comments and Proposed Future Agenda Items.

Commissioner Baker would like to discuss the City Attorney issue and the strong mayor issue with respect to SB 1439.

MOTION: To adjourn the meeting.

The meeting adjourned at 3:07 p.m.

Respectfully Submitted,
Julianna Contreras
Commission Assistant,
Approved

Richard C. Miadich, Chair
Fair Political Practices Commission