



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 22, 2024

Cindie K. McMahon
City Attorney
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Re: Your Request for Advice
Our File No. A-24-011

Dear Ms. McMahon:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Under the Act, may Carlsbad Mayor Pro Tem Dr. Priya Bhat-Patel propose the City adopt secure gun storage laws, given that her former employer is a gun violence prevention organization?

CONCLUSION

No. Because Mayor Pro Tem Bhat-Patel has received more than \$500 in income from her former employer within the past 12 months, and a nexus exists between the income she received for advancing the organization’s gun violence prevention advocacy efforts and the governmental decisions she now seeks to propose in her capacity as a public official.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS AS PRESENTED BY REQUESTER

Dr. Priya Bhat-Patel is the Mayor Pro Tem of the City of Carlsbad (“City”). From August 2022 to August 2023, Mayor Pro Tem Bhat-Patel was employed by Everytown for Gun Safety (“Everytown”), a gun violence prevention organization. The organization recommends a number of actions to keep guns out of the wrong hands, keep communities safe, keep guns out of schools, be a responsible gun owner, hold the gun industry accountable, and prohibit assault weapons and dangerous hardware.

Mayor Pro Tem Bhat-Patel’s position with Everytown was Associate Regional Director. Her work was done at the state level. She did not work with local governments, including the City, because of her work as an elected City official. However, Everytown has engaged in advocacy activity in the City through affiliated grassroots networks, including Moms Demand Action and Students Demand Action.

One of Everytown’s recommended actions for responsible gun ownership is the passage of secure gun storage laws. Mayor Pro Tem Bhat-Patel has long wanted to propose the City of Carlsbad adopt such an ordinance. However, she refrained from doing so while she was employed by Everytown to avoid any Political Reform Act or other conflict of interest concerns.

Since she is no longer employed by Everytown, she would like to bring forward the proposal for the City Council’s consideration and, consequently, is seeking guidance regarding her duties under the Political Reform Act.

In your request for advice, you also provided a link to Everytown’s website for additional information about the organization. The website, www.everytown.org, includes a page on secure gun storage and lists various governmental entities’ signing secure gun storage laws into effect as advocacy victories.

ANALYSIS

Under Section 87100 of the Act, “[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official’s position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official’s immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests is “[a]ny source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103(c).)

Because Everytown is a source of income greater than \$500 within the past 12 months, Mayor Pro Tem Bhat-Patel has an economic interest in Everytown. Accordingly, Mayor Pro Tem

Bhat-Patel would have a disqualifying financial interest in a governmental decision that would have a reasonably foreseeable, material financial effect on Everytown.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).”

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

Under the Act’s “nexus test,” any reasonably foreseeable financial effect on a source of income to a public official or the official’s spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official’s spouse receives or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b).)

The rationale for the nexus test is that, when an employee earns a salary to accomplish a purpose that may be advanced by what he or she does as a public official, we presume that the private employer is benefiting from the actions of the employee in his or her official capacity. (*Garza* Advice Letter, No. A-17-207; *Tran* Advice Letter, No. A-16-024; *Maltbie* Advice Letter, No. A-15-243.) Typically, a “nexus” is found in situations where the official is also a high-level employee with direct influence and control over their employer’s management or policy decisions. (*Tran* Advice Letter, *supra*; *Moser* Advice Letter, No. A-03-147; *Low* Advice Letter, No. A-99-305.) The nexus test applies even with respect to a former employer. (See *Maurer* Advice Letter, No. I-23-008.)

Although Mayor Pro Tem Bhat-Patel did not work at the local level for Everytown, she was an Associate Regional Director of the non-profit. Everytown is a gun violence prevention organization that has recommended passage of secure gun storage laws to promote responsible gun ownership. The organization considers governmental entities signing such laws into effect as advocacy victories. As a former Associate Regional Director of an anti-gun violence organization specifically advocating for the passage of secure gun storage laws, the very nature of Everytown and Mayor Pro Tem Bhat-Patel’s work for the organization appears to have been geared towards achieving the type of changes in law Mayor Pro Tem Bhat-Patel would now like to bring forward in her capacity as a public official. (See *Montoy* Advice Letter, No. I-19-209 [finding likely nexus in decisions involving project labor agreements where the “very nature” of official’s work for labor council “appears to be closely tied to advancing the interests of affiliated unions and achieving beneficial working conditions for them”].) As such, a nexus exists between Mayor Pro Tem Bhat-Patel’s previous work for Everytown and the secure gun storage law decisions she would like to

propose in her capacity as a public official. Because this constitutes a material financial effect on her source of income interest, Mayor Pro Tem Bhat-Patel is disqualified from taking part in such governmental decisions until Everytown no longer constitutes a source of income interest (i.e., after it has been more than 12 months since she received \$500 in income from Everytown).

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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