BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of	)	
	)	No. O-04-093
Opinion requested by	)	October 7, 2004
David W. Roberts	)	
	)	
	)	
	)	
	)	

BY THE COMMISSION: David W. Roberts has requested an opinion of the Fair Political Practices Commission on the following question:

I. Question

Does Mr. Roberts have any economic interests arising from his registered domestic partnership as a result of Assembly Bill 205?

II. Conclusion

The Act does not define the term "spouse." However, the Commission has applied family law concepts when analyzing when a public official has a community property interest in his or her spouse's income. Because we apply these concepts when analyzing community property issues for purposes of the Act, we give consideration to Assembly Bill 205's purpose of extending the rights and obligations of spouses to registered domestic partners. Therefore, we conclude that the term "spouse," as used in determining an official's economic interests for purposes of the disqualification and disclosure provisions of the Act, includes registered domestic partners as of January 1, 2005. Because we conclude Mr. Roberts will have an economic interest in the source of his registered domestic partner's income, we extend that analysis to further conclude that he will have an economic interest arising from his registered domestic partnership as a result of his domestic partner's investments and real property, and resulting from any personal financial effects on his domestic partner. However, this determination is limited to the provisions of the Political Reform Act. Therefore, the Commission's conclusion in this opinion does not create a marriage nor confer the status of being married upon any person.

III. Facts

Mr. Roberts is running for the Solana Beach City Council. He and his registered domestic partner own a home in Solana Beach and are jointly responsible for each other's basic living expenses. Mr. Roberts' partner is a part-time salaried property manager for an oceanfront condominium complex in Solana Beach. In December 2003, Mr. Roberts and his partner sold an individual condominium unit where his domestic partner is currently employed as the property manager. He has no other interest in this oceanfront condominium complex.

IV. Analysis

A. Law

The Act's conflict-of-interest provisions ensure that public officials "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Specifically, section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

A public official has a "financial interest" in a governmental decision within the meaning of the Act, if it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; regulation 18700(a).) The Commission has adopted a standard eight-step analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1)-(8).)

The conflict-of-interest issue raised by Mr. Roberts concerns the identification of his economic interests, Step 3 of this analysis. Section 87103 identifies the following economic interests:

- A public official has an economic interest in a business entity[1] in which he or she has a direct or indirect investment[2] of $2,000 or more (section 87103(a); regulation 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management (section 87103(d); regulation 18703.1(b));

- A public official has an economic interest in real property in which he or she has a direct or indirect interest of $2,000 or more (section 87103(b); regulation 18703.2);

- A public official has an economic interest in any source of income, including promised income, which aggregates to $500 or more within 12 months prior to the decision (section 87103(c); regulation 18703.3);

- A public official has an economic interest in any source of gifts to him or her if the gifts aggregate to $340 or more within 12 months prior to the decision (section 87103(e); regulation 18703.4);

---

1 "Business entity" means any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. (Section 82005.)

2 An indirect investment or interest means any investment or interest owned by the spouse of an official or by a member of the official's immediate family, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.)

- A public official has an economic interest in his or her personal finances, including those of his or her immediate family -- this is the "personal financial effects" rule (section 87103; regulation 18703.5).

B. Application of Law

The only economic interests about which Mr. Roberts has provided information are his interests in the source of his registered domestic partner's income[3], and the source of the proceeds from the sale of his condominium unit.

Purchasers of the Condominium as a Source of Income: If Mr. Roberts is elected, the purchasers of the condominium unit will qualify as his economic interests for a 12-month period after receipt of the payment. Since he sold the units in December 2003, we will not further analyze this economic interest.[4]

Other Sources of Income: Section 82030 defines "income" to include "any community property interest in the income of a spouse." Traditionally, the Commission has considered and applied family law concepts when analyzing community property issues. (See *Morales* Advice Letter, No. A-99-246(a); *Hackard* Advice Letter, No. A-84-070; *In the Matter of Art Torres*, 2 FPPC Ops. 31.) This approach has been used when analyzing both disclosure and disqualification obligations under the Act. (*Grigg* Advice Letter, No. I-02-184; *Moen* Advice Letter, No. A-01-078.) However, the family law "community property" rule has been applied only in the context of a marital relationship. (*Ibid.*) For example, in the *Moen* letter, we considered Family Code section 299.5(d) which stated that a domestic partnership did not create community property or quasi-community property. Assembly Bill 205, when in effect, will change the scope of "community property." (Chapter 421, Stats. 2003.) In particular, this bill repeals Family Code section 299.5 and provides that registered domestic partners have the same rights and obligations as spouses under the law without modifying the word spouse. Thus, as of January 1, 2005, it appears that Mr. Roberts will have a community property interest in his registered domestic partner's income.

As noted above, the Act expressly provides that "income" includes "any community property interest in the income of a *spouse*." (Section 82030. Emphasis added.) However, the Act does not define the term "spouse" nor does it specify the circumstances under which an official has a community property interest. Because we apply family law concepts when analyzing community property issues for purposes of the Act (see *Morales*, *supra*), we give consideration to Assembly Bill 205's purpose of extending the rights and obligations of spouses to registered domestic partners. Consequently, we conclude that the term "spouse" as used in determining an official's economic interests for purposes of disqualification and disclosure and for purposes of interpreting the Act generally includes a registered domestic partner as of

---

3 We assume, for purposes of this analysis that this figure aggregates to $500 or more within the last 12 months before any affected governmental decision.

4 If the purchasers are the subject of a governmental decision once Mr. Roberts assumes office, he should seek further assistance.

January 1, 2005.[5] Thus, Mr. Roberts will have an economic interest in the source of his registered domestic partner's income when Assembly Bill 205 goes into effect.[6]

Investments: Section 82034 defines "investment" to mean:

> "... any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official, or other filer, or his or her ***immediate family***..." (Emphasis added.)

"Immediate family" means the spouse and dependent children. (Section 82029.) Because we conclude above that the term "spouse" includes a registered domestic partner, Mr. Roberts will also have an economic interest in an investment of his registered domestic partner.

Interests in Real Property: Section 82033 states that "interest in real property" includes:

> "... any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her ***immediate family*** if the fair market value of the interest is two thousand dollars ($2,000) or more. ..." (Emphasis added.)

Again, because we conclude that the term "spouse" and therefore "immediate family" includes registered domestic partners, Mr. Roberts will also have an economic interest in any real property owned by his registered domestic partner.

Personal Financial Effect: In addition, Mr. Roberts has an economic interest in his personal expenses, income, assets, or liabilities, as well as those of his immediate family, including those of his registered domestic partner. This is known as the "personal financial effects" rule (section 87103, regulation 18703.5).

In sum, Mr. Roberts' community property interest in his registered domestic partner's income from his partner's employment at an oceanfront condominium will not, in every instance, preclude him from voting on decisions involving his partner's employer, but may present

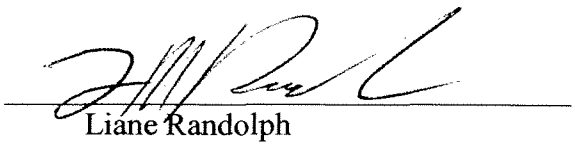
---

5 Assembly Bill 205 also expressly provides that: "[t]his section does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative." (Family Code § 297.5(j), effective January 1, 2005.) However, because the Act does not define "spouse," no provision of the Act would be amended or modified. Consequently, this provision of the bill does not preclude the analysis above.

6 However, please note that this determination is limited to the provisions of the Political Reform Act. Therefore, the Commission's conclusion does not create a marriage nor confer the status of being married upon any person.

conflict-of-interest issues if a specific governmental decision will have a material financial effect on an economic interest arising from his registered domestic partnership. Of course, he must also consider a particular decision's effect on any other economic interests he may have.

Adopted by the Commission on October 7, 2004. Concurring: Commissioners Blair, Downey, and Randolph. Dissenting: Commissioners Karlan and Knox.



Liane Randolph
Chairman

DISSENTING OPINION

Commissioners Karlan and Knox, dissenting:

I fully agree with the Commission's position on the merits. Assembly Bill 205 requires construing provisions of the Political Reform Act that apply to a public official on the basis of facts about an official's "spouse" to apply to an official who has a registered domestic partner.

As the majority opinion points out, the Commission has consistently "considered and applied family law concepts" in construing provisions of the Political Reform Act that depend on familial relationships. (Majority Opinion at page 3.) Section 4 of A.B. 205 adds section 297.5 to the Family Code and provides, in pertinent part that "[r]egistered domestic partners . . . shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses." Thus, the state's policy of imposing identical obligations on spouses and on registered domestic partners should be incorporated into the Political Reform Act.

My sole disagreement with the majority comes with respect to the *means* of making this necessary change. I believe that we should proceed by regulation, which would both give notice to the regulated community and make clear that the obligations of the Political Reform Act extend not only to the question of officials' participation in public decisions – the precise question answered by the majority (see Majority Opinion at page 1) – but also to other aspects of the Act that relate to "spouses," such as the scope of Statements of Economic Interest. I would support enacting such a regulation using the Commission's emergency regulatory powers, to ensure that the regulation is in place before the effective date of A.B. 205.

Pamela S. Karlan

Pamela S. Karlan
Commissioner