

State of California



**SUPERSEDED**

**Fair Political Practices Commission**

by A-97-465

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

August 15, 1984

Dr. Thomas Klein  
106 South 4th Street  
Patterson, CA 95363

Re: Your Request for Advice  
Our Advice No. A-84-152

Dear Dr. Klein:

Thank you for your request for advice on the conflict of interest provisions of the Political Reform Act. My advice is based upon the facts provided by you and Patterson City Attorney, Harold Densmore. If any of the facts stated in this letter materially change, please contact me again so that we can discuss whether additional written advice is necessary. My advice concerns only your future conduct.

FACTS

The City of Patterson adopted a self-funded dental services plan for its employees. The plan is administered by the Stanislaus Foundation for Medical Care (hereinafter "Medical Care Foundation").<sup>1/</sup> The dental services are provided by the members of the Stanislaus Dental Foundation (hereinafter "Dental Foundation"), a division of the Medical Care Foundation. An individual covered by the plan<sup>2/</sup> will receive 80% coverage (up to \$1,000 annually) in dental fees. The individual is liable for a \$25 deductible amount. The dental provider bills the Medical Care Foundation for 80% of the fee and collects the deductible amount and any additional fees from the patient. The Medical Care Foundation bills the City for the amount to be paid to the dentist. The City Council authorizes payment of the

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<sup>1/</sup> The Medical Care Foundation is a non-profit corporation.

<sup>2/</sup> Dental coverage extends to a City employee and eligible family members.

bills submitted by the Medical Care Foundation as part of its consent calendar. The names of individual dental providers are not listed on the consent calendar. (See the attached copy of the consent calendar).

You are a member of the Patterson City Council. You are also a member of the Dental Foundation and you provide dental services to four City employees and their families.

#### QUESTION PRESENTED

Does the Political Reform Act require you to disqualify yourself from the City Council's approval of payments to the Medical Care Foundation?

#### CONCLUSION

You must disqualify yourself from any decision which will foreseeably have a material financial effect on the Medical Care Foundation or on the Dental Foundation. You can approve the payments to the Medical Care Foundation as long as this remains a solely ministerial action.

#### DISCUSSION

Government Code Section 87100<sup>3/</sup> prohibits a local public official from making, participating in the making, or in any way attempting to use his official position to influence, a governmental decision in which he knows or has reason to know he has a financial interest. An 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<sup>4/</sup> on:

- (a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

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<sup>3/</sup> Hereinafter all statutory references are to the Government Code unless otherwise indicated.

<sup>4/</sup> For an explanation of the term "material financial effect," see the enclosed copy of 2 Cal. Adm. Code Section 18702.

(c) Any source of income . . . aggregating two hundred fifty dollars (\$250) or more in value . . . received by . . . the public official within 12 months prior to the time when the decision is made.

Section 87103.

You have an investment interest in your dental practice. Your sources of income include your dental practice; the Medical Care Foundation and the Dental Foundation;<sup>5/</sup> and those dental patients who paid you \$250 or more within the last 12 months.<sup>6/</sup> You must disqualify yourself from a decision if it is foreseeable that it will have a material financial effect on your investment interest or on any of your sources of income.

At its monthly City Council meetings, the Council is asked to approve the issuance of checks to certain individuals and entities as part of the consent calendar. Sometimes the calendar lists checks to the Medical Care Foundation. I was advised by Mr. Densmore that, although checks on the consent calendar are sometimes questioned, in the case of the payments to the Medical Care Foundation, the Council must authorize the payments in order to satisfy its contractual obligation to the Medical Care Foundation. Thus, under normal circumstances, the approval of a payment to the Medical Care Foundation appears to be a solely ministerial action which does not involve any discretion as to whether, or how much, the Foundation will be paid. As long as the approval remains a solely ministerial act, you may participate in the approval.<sup>7/</sup>

If a check to the Medical Care Foundation is removed from the consent calendar, or if there is a dispute over whether, or

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<sup>5/</sup> As stated above, the Dental Foundation is a division of the Medical Care Foundation. You must list these entities on your Statement of Economic Interests as sources of income.

<sup>6/</sup> Section 82030 provides that an official's income includes a pro rata share of any income of any business entity in which the official owns a 10% or greater interest.

<sup>7/</sup> An official is not "making or participating in the making of a decision" within the meaning of Section 87100 if an action is solely ministerial. (See 2 Cal. Adm. Code Section 18700.)

Dr. Thomas Klein  
August 15, 1984  
Page 4

how much, to pay the Medical Care Foundation, then you must disqualify yourself if the decision will foreseeably have a material financial effect on the Medical Care Foundation, the Dental Foundation, or your own practice. In addition, you will be required to disqualify yourself on other decisions, such as a decision on whether to renew the City's contract with the Medical Care Foundation, if the decision will foreseeably have a material effect on any of your financial interests.

If you have any questions about the advice contained in this letter, or if you need future advice, please feel free to contact me at 916/322-5901. As stated earlier, the advice in this letter is based solely on the information that you and Mr. Densmore have given us. The FPPC has not made any independent investigation or findings of fact. So long as you have requested our advice in good faith and have truthfully disclosed all of the material facts, you will be immune from any administrative enforcement proceedings, and will have a good faith defense against certain other proceedings, if you act in reliance on this advice. (Section 83114(b)). This letter does not constitute advice under Sections 1090 or 1091, or under any other provisions of law not included in the Political Reform Act. If you need advice on any other laws, you should seek other legal counsel.

Very truly yours,

*Janis Shank McLean*  
Janis Shank McLean  
Counsel, Legal Division

JSM:km  
Enclosures  
cc: Pat Maisetti, Mayor  
Harold R. Densmore, City Attorney



# City of Patterson

P.O. Box 667, Patterson, California 95363 (209) 892-2041



June 1, 1984

Fair Political Practices Commission  
Legal Division  
P. O. Box 807  
Sacramento, CA 95814

Gentlemen:

The City of Patterson has gone to a full self-funding dental services plan for its employees. The plan is to be administered by the Stanislaus Foundation For Medical Care and dental services are to be provided by members of the Stanislaus Dental Foundation, which I understand to be a non-profit corporation. Our question is, will a member of the City Council, a dentist, and a non-salaried member of the Stanislaus Dental Foundation and thus one who could be furnishing dental services to city employees under the plan, have such a conflict as would require him to disqualify himself from participating in any acts of the Council leading up to an agreement with the Stanislaus Foundation For Medical Care and/or Stanislaus Dental Foundation. Thank you.

Yours very truly,

HAROLD R. DENSMORE,  
City Attorney  
P. O. Box 51  
Newman, CA 95360

HRD:cc



MAY 23 2 40 PM '84

May 23, 1984

Fair Political Practices Commission  
1100 K Street Building  
Sacramento, California 95814

RE: Financial Disclosure Requirements For Members  
of the Board of Directors of the Tustin Water  
Corporation; Request for Opiniion

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Gentlemen:

#### REQUEST

It is requested that the Fair Political Practices Commission provide this office with an opinion as to whether the members of the Board of Directors of the Tustin Water Corporation are required to file Statements of Economic Interest.

#### FACTS

The Tustin Water Corporation is a California, nonprofit, public benefit corporation. The Tustin Water Corporation was formed as a so-called "63-20 corporation" (fulfilling the requirements of Revenue Ruling 63-20 of the Internal Revenue Service) to act on behalf of the City of Tustin in issuance of tax-exempt bonds to finance the purchase of all of the stock of a private corporation (the "Tustin Water Works") and to lease the water system to the City of Tustin. The following documents are enclosed:

- A. Articles of Incorporation of the Tustin Water Corporation.
- B. By-Laws of the Tustin Water Corporation.
- C. Agreement for the Purchase and Sale of All of the Common Stock of the Tustin Water Corporation.
- D. Draft of Lease between the City of Tustin and the Tustin Water Corporation.
- E. Copy of Official Statement of the bond sale.
- F. Conflict of Interest Code of the City of Tustin.

Members of the Board of Directors of the Tustin Water Corporation have been requested to file Statements of Economic Interest pursuant to the Conflict of Interest Code of the City of Tustin.

Two members of the Board of Directors of the Tustin Water Corporation, Len Miller and William A. Moses, II, have objected to the filing of Statements of Economic Interest and have sought the advice of their own legal counsel. Copies of the opinions received are attached.

If there are any questions or you desire additional information or documents, please advise.

Respectfully,



JAMES G. ROURKE  
City Attorney  
City of Tustin

JGR:se:D:2/22/84(27)

Enclosures as cited.

cc: MW  
WH



MAY 31 1 01 PM '84

May 21, 1984

Fair Political Practices Commission  
1100 K Street Building  
Sacramento, California 95814

RE: Financial Disclosure Requirements for members of the Board of Directors  
of the Tustin Water Corporation - Request for Opinion

Gentlemen:

The Tustin City Attorney wishes the members of the above board to file financial statements. Our board contacted another attorney - Mr. Jack Rimel for an opinion which is attached.

Attached, also, are copies of my letters of January 10, 1984, as well as a copy of an undated letter "To Mr. Rimel". Two members of the board of directors, myself and Mr. William A. Moses, II, object to the filing of conflict of interest reports. Neither one of us have made any decision and refuse to do so pertaining to the Tustin Water Corporation other than acceptance of the water bond bid as recommended by the City Attorney - Mr. Rourke and payment of legal fees to Mr. Rourke who has been City Attorney for over ten years. It is our desire to resign and accordingly wish to do so before any other decision is made. Accordingly, if a resignation is made, we do not wish to file the financial statement as of the date of the appointment nor the date of our resignation. We were not advised that statements were a requirement of office as we were told that we were "Public Spirited Citizens" serving as a body, while the Tustin City Council handled the total operation management and control of the district. It was our understanding that this was an honorary position and there would be nothing to do unless the City of Tustin defaulted. Also, the ordinance requiring the filing was made last September, retroactively after our appointment.

Your advice in this matter is appreciated. We hope you will concur with our view as we have obviously had no conflict of interest.

Sincerely,

Len Miller

cc: Mr. William A. Moses  
Mr. James Rourke  
Councilman Frank Greinke  
Councilman Richard Edgar  
Councilman Donald Saltarelli

LM/ljs  
encl.



Mr. Jack Rimel  
Rimel & rimel  
1055 N. Main Street  
Santa Ana, CA

Hand Deliver: 

Dear Mr. Rimel:

1. Exhibit I - Reference to "Public Spirited Citizens", we are now suddenly considered "designated employees". (Exhibit #3)
2. Exhibit II - Board has "little or no discretionary authority". Can not even fill vacancies without council approval.
3. Board receives no compensation. Water Corporation is leased to the City of Tustin and run by the City until the year 2003.
4. Council resolution of 9/5/83 requires members of the Tustin Water Corporation to file - not City of Tustin Water Corporation - written incorrectly.
5. Letter of 12/7/83 (Exhibit #4) regarding requiremnt of filing.
6. Letter of 12/13/83 (Exhibit #5) regarding a fine of \$10.00 per day. Obviously time is of the essence.
7. Copies of the revenue bond offering perspective Bartle Wells & Associates.
8. Since we have absolutely no authority and since the ordinance does not apply to the City of Tustin Water Coporation, we do not believe we should disclose our assets. There can be no conflict of interest. Also it is our belief that a revised law, retroactively applicable to the City of Tustin Water Corporation members, would not apply to us.

Time is of the essence. Please review and advise. The maximum appropriation for legal defense is \$500.00.

Sincerely,

Len Miller

LM/ljs

INSURANCE AND CONTRACT BONDS

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ROBERT E. MURPHY  
ATTORNEY AT LAW

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