

State of California



Fair Political Practices Commission

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Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
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February 28, 1985

John R. Harper
Nazarek, Harper, Hopkins
& McFarlin
2171 Campus Drive, Suite 330
Irvine, CA 92715

Re: Your Request for Advice
Our File No. A-85-014

Dear Mr. Harper:

Thank you for your letter requesting advice on behalf of Placentia City Councilmember Robert W. Kuznik regarding his duties under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

Councilmember Kuznik is President of Jaycox Disposal Company which provides residential, commercial, and industrial waste collection services to the City of Placentia, as well as to other neighboring communities. Councilmember Kuznik does not have any investment in Jaycox, but he receives a salary for his services as president.

Councilmember Kuznik has recently formed a company which will provide computer services and market computer software. Councilmember Kuznik is the principal stockholder of this company. He intends that this company will provide data processing services to Jaycox with regard to Jaycox's processing of its residential, commercial, and industrial accounts.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

You have stated that Councilmember Kuznik has disqualified himself from participating in any decisions of the Placentia City Council related to Jaycox or its contract with the City.

QUESTION

What are Councilmember Kuznik's duties under the conflict of interest provisions of the Political Reform Act as a result of his ownership interest in the new computer services company?

CONCLUSION

If it is reasonably foreseeable that a matter before the City Council would have a material financial effect on the computer services company, Councilmember Kuznik is required to disqualify himself from participating in the decision. He must disclose that he has a conflict of interest, and that disclosure must be made part of the City Council's official record. These duties are in addition to any disqualification and disclosure required under the Political Reform Act when Councilmember Kuznik has a conflict of interest regarding Jaycox Disposal Company.

DISCUSSION

Section 87100 prohibits a public official from making or participating in a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87103 provides that 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, distinguishable from its effect on the public generally, on:

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

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the

public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

If Councilmember Kuznik's investment in the computer services company exceeds \$1,000, or if he has received \$250 or more in income from the company during the last 12 months, or if he holds a position such as director, officer, or employee of the company. In addition, if he holds more than a 10 percent interest in the company, he must not participate in any decision which could materially affect any investments or any interests in real property held by the corporation or any sources of income to the corporation.^{2/}

For purposes of determining whether the effect of a decision on the computer services company would be considered material, you should refer to Commission regulation 2 Cal. Adm. Code Section 18702 (copy enclosed).

When Councilmember Kuznik determines that it is reasonably foreseeable that a decision before the City Council could have a material financial effect on the computer services company, that determination must be accompanied by the disclosure of the interest, and the disclosure must be made part of the agency's official record (2 Cal. Adm. Code Section 18700(b)(5)).

^{2/} The income of an individual is defined to include a pro rata share of any income of a business entity in which the individual has a 10 percent or greater interest. Section 82030(a). For example, if he owns a 50 percent interest in the computer services company, any client of the company, including Jaycox Disposal Company, who has paid the company \$500 or more during the previous 12 months would be considered a source of income to him.

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You have indicated that Councilmember Kuznik is aware of his duties under the Political Reform Act regarding his financial interest in Jaycox Disposal Company; therefore, I have limited this advice to potential conflicts of interest regarding the computer services company. With regard to each matter before the City Council, Councilmember Kuznik must determine whether he has a conflict of interest as to Jaycox Disposal Company, the computer services company, or both companies. In each instance that a conflict of interest exists, Councilmember Kuznik must disqualify himself from participating in the decision of the City Council.

This advice is limited to the provisions of the Political Reform Act. I have not discussed any issues relating to Section 1090 because the interpretation and enforcement of that section is outside of the Commission's jurisdiction.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,


Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosure

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A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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BRET H. REED, JR.
OF COUNSEL

January 23, 1985

Janis McLean
Staff Attorney
Fair Political Practices Commission
1100 K Street Building
P.O. Box 807
Sacramento, California 95804

Dear Ms. McLean:

As City Attorney for the City of Placentia, I am writing this letter on behalf of Councilmember Robert W. Kuznik, requesting a formal opinion concerning any potential conflict of interest he may have, and the disclosure requirements related thereto, based upon the following factual circumstances.

Mr. Kuznik is President of Jaycox Disposal Company which provides residential, commercial and industrial waste collection services to the City of Placentia, as well as to other neighboring communities. Jaycox has provided those services to Placentia for the last twenty plus years. Long before Mr. Kuznik became involved with the Company, Jaycox provided services under a continuing five-year contract. If the City determines to cancel a contract, it must give Jaycox, in essence, four years notice. This arrangement predates substantially Mr. Kuznik's tenure on the Council. Mr. Kuznik does not have any ownership in the company.

Mr. Kuznik is aware of his conflict with regard to Jaycox and has absented himself from any discussion related to Jaycox or its contract with the City and has not participated in any voting related thereto. In connection with that abstention, Mr. Kuznik has disclosed the nature of his interest as required by law.

Janis McLean
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Outside of his employment with Jaycox, Mr. Kuznik has recently formed a company which would provide computer services and market computer software. He has intended that this new entity will provide data processing services to Jaycox Disposal Company related to Jaycox processing of its residential, commercial and industrial accounts. Mr. Kuznik will be the principal stockholder in this company.

Based upon the foregoing, does Mr. Kuznik have any additional conflict of interest with regard to this new company and what are his disclosure requirements.

If you have any questions, please don't hesitate to give me a call or call Mr. Kuznik directly at 714-634-4551.

Yours truly,


John R. Harper
City Attorney

JRH:gr
cc: Robert Kuznik