

State of California



Fair Political Practices Commission

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

September 19, 1985

J. Steven Lempel
City Attorney
City of Sanger
906 Santa Fe Avenue, Suite 101
Fresno, CA 93721

Re: Your Request for Information
Our File No. A-85-193

Dear Mr. Lempel:

Thank you for your request for information concerning two recent staff advice letters, A-84-288 (Harron) and A-85-008 (Garcia). These letters are not inconsistent either with each other or with the Political Reform Act.^{1/}

As you know, Section 87100 prohibits a public official from making, participating in, or attempting to use his or her official position to influence a governmental decision in which the official has a financial interest. An official has a financial interest when it is reasonably foreseeable that the decision will have a material financial effect on, among other interests:

(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

^{1/} The Political Reform Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code.

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

Section 87103(c).2/

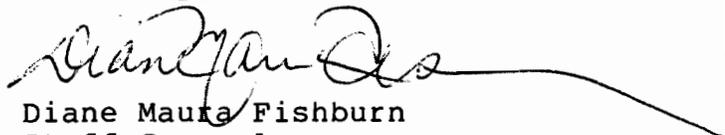
Accordingly, an official must not participate in a decision when it is reasonably foreseeable that the decision will materially affect the official's (or his spouse's) employer or any other source of income. This is true whether or not the decision will also directly affect the official himself.

In the Harron letter (A-84-288), the source of income to the councilmember/stockbroker was his client. Thus he was advised he could not participate in city decisions which materially affected his client; however, he was also told he could participate in decisions affecting his client's employer who was not a source of income to him unless those decisions also affected his client.

A different situation was presented in the Garcia letter (A-85-008); there the source of income to the councilmember was her husband's employer.3/ Thus she was advised she could not participate in decisions which affected the employer.

I hope that the foregoing discussion resolves your concerns. Please feel free to contact me if I can be of further assistance at (916) 322-5901. I have enclosed a copy of our Guide to the Political Reform Act of 1974 (Conflict of Interests) for your information.

Sincerely,



Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh
Enclosure

2/ Section 87103 includes an exception to disqualification for decisions which affect the official's interest in a same or similar manner as the public generally.

3/ The definition of income provides that income to an official includes her community property interest in the income to her spouse. Section 82030(a).

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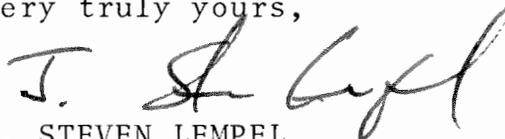
Technical Assistance Office
Fair Political Practices Commission
P. O. Box 807
Sacramento, Calif. 95804

Gentlemen:

I recently had an opportunity to review the California League of Cities City Attorney's Newsletter for August, 1985. Contained therein is a summary of recent FPPC Opinions, which appear to be inconsistent. In particular, I am puzzled by the apparently inconsistency as between Opinion A-84-288 (Thomas Harron) in which the Commission ruled that a City Councilmember stockbroker was not precluded from participating in a decision which affected his stockholder client's employer, to the extent that the decision did not directly affect his client. In Opinion A-85-008 (Anthony Garcia), however, the Commission ruled that a Councilmember was prohibited from participating in a decision which financially impacted her husband's employer, regardless of whether or not there would be a financial impact on her husband's income. Thus, in the one situation (Harron), the Commission makes participation dependent upon the foreseeability of financial impact on the Councilmember's client, and in the other situation (Garcia), the Commission says that the foreseeability of financial impact on the Councilmember's spouse is irrelevant to disqualification. How are these two Opinions reconciled?

I would also appreciate receiving copy of your Opinion in Case A-84-259, Swallow.

Very truly yours,



J. STEVEN LEMPEL
City Attorney, City of Sanger

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