



California Fair Political Practices Commission

August 12, 1986

John D. Closs
Louise T. Closs
Law Offices of Closs & Closs
121 "F" Street
Park Plaza Professional Building, Suite 2
P.O. Box 1070
Needles, CA 92363

Re: Your Request for Advice
Our File No. A-86-244

Dear Mr. and Mrs. Closs:

Thank you for your request for advice regarding the conflict of interest provisions of the Political Reform Act of 1974 (the "Act").^{1/}

QUESTION

Is there a conflict of interest under the Political Reform Act for Louise Closs, or her husband, John Closs, if Louise Closs serves as the City Attorney of Needles while John Closs serves as the elected Justice Court Judge for the Needles-Calzona Judicial District? Mrs. Closs has informed us that she would obtain instruction from the City Council of Needles that she is to have no connection, with respect to City business, with the local Justice Court.

CONCLUSION

Under the Political Reform Act, there is no conflict of interest for either Mr. or Mrs. Closs in the situation presented. We suggest, however, that Mr. and Mrs. Closs request advice from the State Bar of California or the Commission on Judicial Performance, concerning the codes of ethics for attorneys and judges.

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

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ANALYSIS

According to Section 87100, no public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he or she knows or has reason to know he or she 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, distinguishable from the effect on the public generally, on the official or on a member of his or her immediate family, or on specified economic interests. Section 87103. The Commission has adopted regulations for determining whether the effect of a decision will be considered material. 2 Cal. Adm. Code Sections 18702, 18702.1, and 18702.2 (copies enclosed).

Section 82048 defines the term "public official" for purposes of the conflict of interest disqualification provisions of the Act. A "public official" is every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government. Section 82048.^{2/}

Therefore, while Mrs. Closs, as Needles City Attorney, is a "public official" under the Act, Mr. Closs would not be a "public official" if he becomes a Justice Court Judge. As a result, the conflict of interest provisions of the Act would not apply to Mr. Closs, but would apply to Mrs. Closs in her official capacity as City Attorney. The Act would not prohibit Mrs. Closs from holding the office of City Attorney because of her husband's election to the Justice Court.

You have indicated that Mrs. Closs would obtain an instruction from the City Council of Needles that she have no connection, with regard to City business, with the Needles-Calzona District Justice Court. She would essentially be disqualifying herself whether or not she has a financial

^{2/} Judges and court commissioners in the judicial branch of government are required to comply with the financial disclosure provisions of the Act. Sections 87200-87210. The laws governing disqualification of judges on the basis of conflicts of interest are contained in the Code of Civil Procedure (Code of Civil Procedure 170, et seq.), and are therefore outside the jurisdiction of the Fair Political Practices Commission. Section 83111.

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interest in a decision. Generally, conflict of interest questions must be analyzed on a case-by-case basis, taking the specific facts of each particular situation into consideration; however, we conclude it is unlikely that the Political Reform Act would require Mrs. Closs' disqualification from participating in decisions as City Attorney of Needles simply because her husband serves as the Justice Court Judge in that judicial district.

The questions presented also relate to the standards of ethical conduct for judges and attorneys. That is not a subject which is governed by the conflict of interest provisions of the Act. You have informed us that you have already presented your questions to the State Bar of California. We suggest that you also contact the Commission on Judicial Performance, or possibly the California Judges' Association, for ethics advice.

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

Sincerely,



Kathryn E. Donovan
Counsel
Legal Division

KED:DL:plh

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July 16, 1986

Fair Political Practices Commission
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Subject: Request for an opinion.

At the present time I am preparing to enter a political campaign in connection with the election of the Justice Court Judge for the Needles-Calzona Judicial District (San Bernardino County).

For about three years I have been "Deputy City Attorney" for the City of Needles. Should I become elected, I would resign the job of Deputy City Attorney.

Meanwhile, my spouse (and law partner) is the City Attorney for the City of Needles. My spouse, Louise T. Closs, will be able to obtain instruction from the City Council that she is to have no connection, with respect to City business, with the local Justice Court. The City, of course, would, to the extent necessary, employ substitute counsel in connection with any transactions in the Needles-Calzona Justice Court.

Given these circumstances, does there exist an unsatisfactory "conflict of interest" (or the appearances of such)?

If so, we would appreciate receiving your views on the matter with respect to the best means of eliminating any such conflict.

As and when you have questions or comments concerning any of the matters raised by this letter, please call me collect.

John D. Closs
Louise T. Closs

JDC/ljg