



# California Fair Political Practices Commission

October 10, 1986

Ann M. Freers  
Littler, Mendelson, Fastiff & Tichy  
Attorneys at Law  
455 Capitol Mall, Suite 420  
Sacramento, CA 95814-4405

Re: Your Request for Advice  
Our File No. A-86-281

Dear Ms. Freers:

Thank you for your letter requesting advice on behalf of Nancy Findeisen, a member of the Board of Education of the Sacramento City Unified School District ("District"). You have asked for advice regarding her duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

## QUESTION

The Board of Education for the District is presently considering whether to approve a project to establish a health care clinic on the campus of one of the District's high schools. If the project is approved, the Sacramento County Health Department ("Health Department") will apply for a grant to fund the project. You have asked whether Board Member Nancy Findeisen is prohibited from participating in the District's decision by virtue of the fact that she is the paid executive director of a nonprofit corporation which would assist the Health Department in writing the grant application.

## CONCLUSION

Board Member Findeisen is prohibited from participating in the District's decision regarding whether to approve a project to establish a health care clinic on the campus of one of the District's high schools.

---

<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Sections 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Administrative Code.

### FACTS

Board Member Findeisen is the paid executive director of a nonprofit corporation, the Community Services Planning Council ("Planning Council"). The Planning Council has received a grant from the Sierra Foundation for Health to promote the establishment of adolescent health care clinics in schools. Under this grant, the Planning Council has provided information about clinics, their feasibility, and their success in other cities. It has also worked with school districts, the county health agency and other human service agencies and organizations to encourage their establishment.

Through the efforts of the Planning Council, the availability of possible funding for such clinics from the Robert Wood Johnson Foundation was made known to the Health Department and various local school districts. The Health Department has indicated its willingness to serve as lead agency for an application to establish clinics. The Planning Council, with the funding from the grant received from the Sierra Foundation, would assist the County Health Department in writing the grant application. No funds received from the Robert Wood Johnson Foundation would go to the Planning Council. Furthermore, the Planning Council would not receive any additional funds from Sierra Foundation for assisting in the project. If the project is approved, the success or failure of the project may affect the Planning Council's reputation.

In order for the Sacramento City Unified School District to participate in this grant application, which would include the establishment of a clinic on one high school campus, the Board of Education must approve the project.

### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence any governmental decision in which she knows or has reason to know she has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision would have a material financial effect, distinguishable from the effect on the public generally, on:

(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.

Section 87103(c).

Board Member Findeisen is the paid executive director of Planning Council. Accordingly, she may not participate in any decision which will have a reasonably foreseeable material financial effect on Planning Council.

In Regulation 18702, the Commission has established guidelines for determining when a decision will have a material financial effect upon an official's interest. Regulation 18702(b)(3)(B) provides that in the case of a source of income of \$250 or more, an official must disqualify herself if "there is a nexus between the governmental decision and the purpose for which the official receives income...." We have consistently interpreted this regulation to mean that a public official may not accomplish as an official what she has been paid to do in her non-governmental capacity. See, Advice Letter to Linda Best, No. A-81-032; Advice Letter to Jeffrey Gunther, No. A-82-055; and Advice Letter to Janet Cornelius, No. A-82-104 (copies enclosed).

In our Advice Letter to Linda Best, supra, we advised that a Planning Commissioner who also was the paid Executive Secretary of COLAB (Coalition of Labor and Business, Alameda and Contra Costa Counties), a nonprofit corporation, was disqualified from participating in decisions which could foreseeably further the policies of COLAB. We stated:

Since part of your duties as Executive Secretary is to lobby for COLAB's positions on governmental action, any actions you would take on the Planning Commission in connection with those positions could foreseeably further the policies of COLAB; there would therefore be a nexus between your actions on the Planning Commission and your duties as Executive Secretary of COLAB. For example, if COLAB took a position on the issue of slope density requirements, you would have to refrain from participating in a Planning Commission decision on the slope density ordinance. Or, if COLAB worked for changes in the process by which governmental entities reviewed proposals for development, you could not participate in Planning

Ann M. Freers  
October 10, 1986  
Page 4

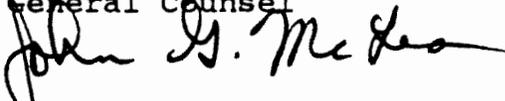
Commission decisions involving the process by which the Commission reviewed proposals for development. And, clearly, if COLAB did take a position relative to a specific development or other type of proposal before the Planning Commission for review, you would be required to disqualify yourself from participating in the review of that proposal.

In the present situation, part of Board Member Findeisen's duties as executive director of the Planning Council is to encourage the establishment of health care clinics in schools. By participating in the decision currently before the District, she would be furthering the interests of the Planning Council. There would, therefore, be a nexus between her action on the District's board and her duties as executive director of the Planning Council. She is, therefore, required to disqualify herself from participating in the District's decision.

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

Sincerely,

Diane M. Griffiths  
General Counsel



By: John G. McLean  
Counsel, Legal Division

JGM:km

IN CALIFORNIA

# LITTLER, MENDELSON, FASTIFF & TICHY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

455 CAPITOL MALL, SUITE 420

SACRAMENTO, CALIFORNIA 95814-4405

(916) 448-7164

650 CALIFORNIA STREET, 20TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94108-2692  
(415) 433-1940

4944 E. CLINTON WAY, SUITE 101  
FRESNO, CALIFORNIA 93727-1695  
(209) 252-4065

706 COWPER STREET  
PALO ALTO, CALIFORNIA 94301-2604  
(415) 326-5732

111 ALMADEN BOULEVARD, SUITE 400  
SAN JOSE, CALIFORNIA 95113-2093  
(408) 998-4150

1925 CENTURY PARK EAST, SUITE 850  
LOS ANGELES, CALIFORNIA 90067-2709  
(213) 553-0308

701 "B" STREET, SUITE 300  
SAN DIEGO, CALIFORNIA 92101-8101  
(619) 232-0441

LITTLER, MENDELSON, FASTIFF & TICHY  
A PARTNERSHIP

THE WORLD TRADE CENTER, SUITE 1653  
BALTIMORE, MARYLAND 21202-3005  
(301) 528-9545

ARTHUR MENDELSON  
WESLEY J. FASTIFF  
GEORGE J. TICHY, II  
J. RICHARD THESING  
ALLEN W. TEAGLE  
ROBERT M. LIEBER  
JORDAN L. BLOOM  
WILLIAM C. WRIGHT  
GARRY G. MATHIASON  
ALAN B. CARLSON  
RICHARD H. HARDING  
ALAN S. LEVINS  
JOHN T. HAYDEN  
RANDOLPH C. ROEDER  
GARY P. SCHOLICK  
ROBERT F. MILLMAN  
WILLIAM F. TERHEYDEN  
NANCY L. DBER  
RICHARD J. LOFTUS, JR.  
LARRY P. SCHAPIRO  
MICHAEL J. HOGAN  
JOHN M. SKONBERG  
ROBERT G. HULTENG  
BARBARA S. DE DDONE  
RICHARD J. CURRIER  
DAVID S. DURHAM  
R. BRIAN DIXON  
ROBERT K. CARROL  
HENRY D. LEDERMAN  
PAULA CHAMPAGNE  
PATRICIA P. WHITE  
RICHARD N. HILL  
FLOYD J. PALMER  
DEREK WOODHOUSE  
SCOTT A. WILSON  
MICHELE J. SILAK  
KAREN E. FORD  
RICHARD A. LEASIA  
JUDY S. COFFIN  
ROY D. AXELROD  
WENDY L. TICE-WALLNER  
JOSEPH A. SCHWACHTER  
WILLIAM WOOD MERRILL  
SPENCER H. HIPPI

LINDBERGH PORTER, JR.  
CHARLOTTE ADDINGTON  
PATRICIA A. SHEPHERD  
SANDRA B. KLOSTER  
GEORGE E. CHAFFEY  
JEFFREY M. TANENBAUM  
CAROL R. CAINE  
RICHARD S. FALCONE  
MARK W. ROBBINS  
CHARLES S. BIRENBAUM  
JENNIFER J. WALT  
GORDON A. LETTER  
JANICE JABLONSKI  
BRIAN T. McMILLAN  
VAN A. GODWIN  
L. ALICE TIREY  
BELINDA D. STITH  
ROBERT T. OWENS  
BRUCE A. GROSSMAN  
MARY LEE THOMPSON  
LINDA J. LOPEZ  
JAMES J. McMULLEN, JR.  
SCOTT A. JOHNSON  
KENNETH R. O'BRIEN  
STEVEN B. BERLIN  
LORI A. BOWMAN  
THOMAS P. DOWD  
SCOTT D. RECHTSCHAFFEN  
JAY P. DUFRECHOU  
CYNTHIA E. MAXWELL  
LESLIE M. CAMPBELL  
DENNIS M. GRADY  
GARY W. BETHEL  
ANN M. FREERS  
SHARON H. SEAY  
DIANE L. KIMBERLIN  
ROBERT W. FEINSTEIN  
THOMAS M. GRIFFIN  
BRUCE J. SARCHET  
KEVIN P. BLOCK  
KIMBERLEY A. WORLEY  
EUGENE FLEMATE  
MAJOR WILLIAMS, JR.  
J. BRIAN McNALLY

October 6, 1986

IN MARYLAND

WARREN M. DAVISON  
LESLIE R. STELLMAN  
ROGER D. MEADE  
JOHN W. KYLE

## VIA HAND DELIVERY

Fair Political Practices Commission  
428 J Street, 7th Floor  
Post Office Box 807  
Sacramento, California 95814

Re: Opinion on Possible Conflict of Interest

Dear Sir:

Per the verbal request of John McLean, this letter is being submitted as a supplement to my letter of September 24, 1986, to the Fair Political Practices Commission, where I asked for a written opinion concerning a possible conflict of interest. I was authorized by the Sacramento City Unified School District and Nancy Findeisen, the board member concerned, to submit that written request for advice.

In the September 24, 1986 letter I refer to the executive director of the Community Services Planning Council. Nancy Findeisen is the Sacramento City Unified School District board member who also holds the executive director position, and about whom the request for advice was made. She reviewed the content of the September 25, 1986 letter for accuracy prior to its submission to you.

We need this opinion prior to the October 13, 1986 board meeting. If we need to provide any further information, please contact me. Again, I appreciate your efforts.

Sincerely yours,

ANN M. FREERS

AMF/ks  
C:441100

Rec'd 9/25/86  
JLM

# LITTLER, MENDELSON, FASTIFF & TICHY

IN CALIFORNIA

ARTHUR MENDELSON	LINDBERGH PORTER, JR.
WESLEY J. FASTIFF	CHARLOTTE ADDINGTON
GEORGE J. TICHY, II	PATRICIA A. SHEPHERD
J. RICHARD THESING	SANDRA B. KLOSTER
ALLEN W. TEAGLE	GEORGE E. CHAFFEY
ROBERT M. LIEBER	JEFFREY M. TANENBAUM
JORDAN L. BLOOM	CAROL R. CAINE
WILLIAM C. WRIGHT	RICHARD S. FALCONE
GARRY G. MATHIASON	MARK W. ROBBINS
ALAN B. CARLSON	CHARLES S. BIRENBAUM
RICHARD H. HARDING	JENNIFER J. WALT
ALAN S. LEVINS	GORDON A. LETTER
JOHN T. HAYDEN	JANICE JABLONSKI
RANDOLPH C. ROEDER	BRIAN T. McMILLAN
GARY P. SCHOLICK	VAN A. GOODWIN
ROBERT F. MILLMAN	L. ALICE TIREY
WILLIAM F. TERHEYDEN	BELINDA D. STITH
NANCY L. OBER	ROBERT T. OWENS
RICHARD J. LOFTUS, JR.	BRUCE A. GROSSMAN
LARRY P. SCHAPIRO	MARY LEE THOMSON
MICHAEL J. HOGAN	LINDA J. LOPEZ
JOHN M. SKONBERG	JAMES J. McMULLEN, JR.
ROBERT G. HULTENG	SCOTT A. JOHNSON
BARBARA S. DE ODDONE	KENNETH R. O'BRIEN
RICHARD J. CURRIER	STEVEN B. BERLIN
DAVID S. DURHAM	LORI A. BOWMAN
R. BRIAN DIXON	THOMAS P. DOWD
ROBERT K. CARROL	SCOTT D. RECHTSCHAFFEN
HENRY D. LEDERMAN	JAY P. DUFRECHOU
PAULA CHAMPAGNE	CYNTHIA E. MAXWELL
PATRICIA P. WHITE	LESLIE M. CAMPBELL
RICHARD N. HILL	DENNIS M. GRADY
FLOYD J. PALMER	GARY W. BETHEL
DEREK WOODHOUSE	ANN M. FREERS
SCOTT A. WILSON	SHARON H. SEAY
MICHELE J. SILAK	DIANE L. KIMBERLIN
KAREN E. FORD	ROBERT W. FEINSTEIN
RICHARD A. LEASIA	THOMAS M. GRIFFIN
JUDY S. COFFIN	BRUCE J. SARCHET
ROY D. AXELROD	KEVIN P. BLOCK
WENDY L. TICE-WALLNER	KIMBERLEY A. WORLEY
JOSEPH A. SCHWACHTER	EUGENE FLEMATE
WILLIAM WOOD MERRILL	MAJOR WILLIAMS, JR.
SPENCER H. HIPPIE	J. BRIAN McNALLY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

455 CAPITOL MALL, SUITE 420

SACRAMENTO, CALIFORNIA 95814-4405

(916) 448-7164

650 CALIFORNIA STREET, 20TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94108-2693  
(415) 433-1940

4944 E. CLINTON WAY, SUITE 101  
FRESNO, CALIFORNIA 93727-1695  
(209) 252-4065

706 COWPER STREET  
PALO ALTO, CALIFORNIA 94301-2604  
(415) 326-5732

III ALMADEN BOULEVARD, SUITE 400  
SAN JOSE, CALIFORNIA 95113-2093  
(408) 998-4150

1925 CENTURY PARK EAST, SUITE 850  
LOS ANGELES, CALIFORNIA 90067-2709  
(213) 553-0308

701 "B" STREET, SUITE 300  
SAN DIEGO, CALIFORNIA 92101-8101  
(619) 232-0441

LITTLER, MENDELSON, FASTIFF & TICHY  
A PARTNERSHIP

THE WORLD TRADE CENTER, SUITE 1653  
BALTIMORE, MARYLAND 21202-3005  
(301) 528-9545

September 24, 1986

IN MARYLAND

WARREN M. DAVISON	ROGER D. MEADE
LESUE R. STELLMAN	JOHN W. KYLE

## VIA HAND DELIVERY

Fair Political Practices Commission  
428 J Street, 7th Floor  
P.O. Box 807  
Sacramento, California 95814

Re: Opinion on Possible Conflict of Interest

Dear Sir:

On October 13, 1986, the Board of Education of the Sacramento City Unified School District will be considering the agenda item described below. Prior to that time, the Board needs a written opinion from you concerning a possible conflict of interest situation which may exist for one of its Board members.

One member of the Board of Education of the Sacramento City Unified School District is the paid executive director of a nonprofit corporation, Community Services Planning Council, hereinafter "Planning Council". Planning Council's funding comes from United Way, contracts from governmental agencies, sale of publications and donations. It also has applied for and received other grant funds.

One such special grant was received from the Sierra Foundation for Health. The purpose of this grant was to promulgate the establishment of school-based adolescent health care clinics. To do this, Planning Council has provided information about clinics, their feasibility, and their success in other cities, and has worked with school districts, the county health agency and other human service agencies and organizations to encourage their establishment.

LITTLER, MENDELSON, FASTIFF & TICHY

Fair Political Practices Commission

September 24, 1986

Page 2.

Through the efforts of Planning Council, the availability of possible funding for such clinics from the Robert Wood Johnson Foundation was made known to the Sacramento County Health Department and various local school districts. The County Health Department has indicated its willingness to serve as lead agency for an application to establish clinics. Planning Council, with the funding from the grant received from the Sierra Foundation, would assist the County Health Department to write the grant application. No funds received from the Robert Wood Johnson Foundation would go to Planning Council. Planning Council will not receive any additional funds from Sierra Foundation for assisting in writing the project.

In order for the Sacramento City Unified School District to participate in this grant application which would include the establishment of a clinic on one campus of the high school, the Board of Education must approve the project. Does the executive director of the Planning Council, who is a Board member, have a conflict of interest on this matter?

I spoke with John McLean of your office on September 23, 1986. He and I concur that based upon the above-stated facts, there is no conflict of interest for the Board member. We reached this conclusion because there is no financial benefit or detriment which will come to Planning Council as a result of the vote of the Board of Education. The most which might benefit Planning Council is that if the project is a success, Planning Council might gain some reputational benefit. On the other hand, were the project to be unsuccessful, Planning Council might experience some detriment to its reputation. Both Mr. McLean and I believe that such benefit or detriment is too tenuous to create a conflict of interest.

As indicated above, the Board of Education must vote on this issue on October 13, 1986. Will you please have a written opinion to me prior to that date? If I can do anything to expedite this process, or to provide any further information, please feel free to contact me.

Very truly yours,

ANN M. FREERS

AMF/lm

cc: Louise A. Perez, President, Board of Education  
Dr. Keith T. Larick, Superintendent  
John McLean, Fair Political Practices Commission