



California Fair Political Practices Commission

March 16, 1987

John R. Calhoun
Long Beach City Attorney
City Hall
333 West Ocean Boulevard
Long Beach, CA 90802

Re: Your Request for Advice
Our File No. I-87-073

Dear Mr. Calhoun:

You have written requesting advice on behalf of Long Beach City Councilman Wallace Edgerton, who represents the City of Long Beach in the Pacific-Asian Congress of Municipalities ("PACOM"). Mr. Edgerton was recently selected by the PACOM executive committee as the PACOM marketing director for a term of three years. Your questions relate to Mr. Edgerton's dual role as a councilmember and as PACOM marketing director. Because we do not have all the material facts necessary to make determinations regarding specific pending decisions, we have treated your letter as a request for informal assistance.^{1/}

QUESTIONS

1. May Mr. Edgerton, acting as the paid or unpaid marketing director of PACOM, solicit funds, make contracts and otherwise deal with private corporations who also have business dealings with the City of Long Beach?

2. If the salary or reimbursement of the PACOM marketing director comes from funds solicited from private corporations, who also have matters before the Long Beach City Council, would that create a conflict of interest?

3. May the City of Long Beach pay the travel expenses of the PACOM marketing director which are incurred in connection

^{1/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Adm. Code Section 18329(c)(3).)

with the city's participation in PACOM activities, while at the same time the marketing director also receives pay and reimbursement from PACOM? Would it make a difference if he did not receive remuneration or reimbursement from PACOM?

4. May the PACOM marketing director use his city-paid staff members during their off-duty hours to perform part-time services for PACOM and pay them with PACOM funds?

5. May Mr. Edgerton personally accept for his own use, or arrange for his city-paid staff members, free passes or discounts to be furnished by transportation companies for travel in connection with PACOM activities? What about free passes or travel discounts for Mr. Edgerton and/or his staff members for travel related to the city's participation in PACOM activities and programs?

6. May Mr. Edgerton receive in-kind services, supplies, or equipment in connection with his position as the PACOM marketing director, or in his capacity as an individual private contractor, from companies or organizations who have business dealings with the city or matters before the Long Beach City Council?

7. May Mr. Edgerton open, maintain and use a bank account for purposes of drawing checks for PACOM expenses?

8. May Mr. Edgerton, with authorization from the PACOM executive committee, enter into independent personal service contracts to perform services for, and receive remuneration from, companies or organizations who may be members of PACOM and who also do business with the city or have matters before the city council?

CONCLUSIONS

1. Mr. Edgerton, acting as the paid or unpaid marketing director of PACOM, may solicit funds for PACOM, make contracts for PACOM, and otherwise deal on behalf of PACOM with business entities which also have business dealings with the City of Long Beach or matters before the city council. However, under certain circumstances, he may be required to disqualify himself from city council decisions affecting those business entities.

2. The fact that the salary or reimbursement of the PACOM marketing director may come from funds solicited from business entities which also have matters before the Long Beach City Council may require Mr. Edgerton to disqualify himself from participation in certain decisions of the city council.

3. The issue of whether the City of Long Beach may pay the travel expenses of Mr. Edgerton which are incurred in connection with the city's participation in PACOM activities, while, at the same time, he is being paid and reimbursed by PACOM, is one which is outside the scope of the Political Reform Act.

4. The issue of whether Mr. Edgerton may use his city-paid staff members during their off-duty hours to perform part-time services for PACOM and pay the staff members with PACOM funds is likewise outside the purview of the Political Reform Act.

5. Whether free passes or discounts to be furnished by transportation companies may be accepted by city-paid staff members or by Mr. Edgerton likewise is not governed by the Political Reform Act. If free passes or discounts are obtained, they may constitute gifts under the Act and could require disqualification in certain situations.

6. Mr. Edgerton may receive in-kind services, supplies, or equipment in connection with his position as PACOM marketing director or as a private contractor from business entities or organizations which have business dealings with the city or matters before the Long Beach City Council. However, under certain circumstances, the receipt of such services, supplies or equipment may require him to disqualify himself from participation in certain city council decisions.

7. The opening of a bank account by Mr. Edgerton for purposes of drawing checks for PACOM expenses does not raise issues within the purview of the Political Reform Act.

8. Mr. Edgerton may enter into independent personal services contracts with business entities or organizations which are members of PACOM and which do business with the city or have matters before the city council. However, under certain circumstances, such arrangements will require him to disqualify himself from city council decisions.

In the conclusions stated above, we have not analyzed the impact of Government Code Section 1090 or 1126. As you know, these sections are not part of the Political Reform Act. You may wish to review issues raised by those sections with Mr. Edgerton.

FACTS

The City of Long Beach is a member of PACOM. Mr. Edgerton represents the City of Long Beach in the PACOM organization.

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In December 1986, Mr. Edgerton was selected by the PACOM executive committee to be the PACOM marketing director for a term of three years.

As the marketing director, Mr. Edgerton is accountable to the PACOM executive committee and is responsible for recruiting marketing members. These include private sector corporations who seek to serve the Pacific basin. From the marketing members, the marketing director will raise funds to finance the PACOM objective of facilitating Pacific Rim trade. These funds are in addition to the membership dues paid directly into PACOM's general fund.

At the present time, the PACOM marketing director is an unpaid position. However, in the future, the marketing director may receive a monthly salary from PACOM or remuneration from some of the private corporations who are members of PACOM. The marketing director will establish his marketing budget from monetary contributions and in-kind support and assistance received from private sector corporations. He will maintain a bank account for purposes of drawing checks for PACOM expenses.

Mr. Edgerton also contemplates entering into some contracts as an individual private contractor with some private sector corporations for performance of certain personal services to further the interests of these corporations.

Mr. Edgerton will be using his position as a Long Beach City Councilman as well as his position as PACOM marketing director to promote PACOM and to solicit private corporations to join and contribute funds to PACOM for its marketing endeavors. Some of the corporations that would be interested in PACOM objectives and would be prospective PACOM members are corporations which do business in Long Beach and obtain permits from and/or have leases or contractual relationships with the city which are subject to approval by the city council.

Mr. Edgerton also plans to use members of his city-paid staff, during their off-duty time, to perform part-time services for PACOM. Their compensation will come from PACOM funds. These city staff members also will be used in the course of their regular city duties to perform services in connection with activities relating to the city's PACOM membership. Mr. Edgerton contemplates that these city staff members would receive free passes or discounts from transportation companies for travel relating to PACOM activities and programs.

ANALYSIS

The Political Reform Act (the "Act")^{2/} provides that no public official shall make, participate in making, or use his official position to influence or attempt to influence the making of, a governmental decision in which he has a financial interest. (Section 87100.) An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect upon the public generally, on the official or any member of his immediate family, or 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.

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

Section 87103(c) and (d).

The effect of a decision will be considered material as to a particular economic interest if it meets the relevant standard under the guidelines contained in Regulations 18702, 18702.1 and 18702.2 (copies enclosed). In order for a decision's effect to be disqualifying, it must also be foreseeable. To be foreseeable, an effect must be more than a mere possibility, but it need not be a certainty. (See, Thorner Opinion, 1 FPPC Ops. 198, No.75-089, copy enclosed.)

At present, Mr. Edgerton is the unsalaried marketing director for PACOM. We understand PACOM to be a nonprofit entity, based in Hawaii. It is not a governmental entity. As a nonprofit entity, it is not a business entity within the

^{2/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

meaning of the Act. (Section 82005.) Consequently, Mr. Edgerton's role as marketing director does not make him an officer of a business entity within the meaning of Section 87103(d), quoted above. At this point in time, PACOM is not a source of income to Mr. Edgerton. Consequently, Section 87103(c) also does not apply. However, if Mr. Edgerton becomes a paid employee of PACOM, then PACOM would become a source of income within the meaning of Section 87103(c) as soon as he receives \$250 in compensation.^{3/}

If Mr. Edgerton does become salaried and his salary is determined in any way by his fundraising efforts, or is funded on a pass-through basis by funds provided by private corporate marketing members, then the sources of those funds may also be considered to be sources of income to him under Section 87103(c). (See, Advice Letter to Lee B. Elam, No. A-82-054, copy enclosed.) Mr. Edgerton will be required to disqualify himself as to any decisions involving the City of Long Beach which will have a reasonably foreseeable material financial effect upon any source of income under Section 87103(c).

We turn now from the general provisions of the law to a more detailed discussion of the questions which you have posed for our consideration:

Fundraising

1. Mr. Edgerton is free to solicit funds for PACOM in his private capacity as an individual or as a PACOM representative. This is true whether his position as PACOM marketing director is paid or unpaid. However, if these funds are converted into his salary, then the contributors may be considered to be sources of those funds, depending upon the exact nature of the arrangement.^{4/} Disqualification would be required as to decisions which would have a reasonably foreseeable material financial effect upon those contributors whose share of his compensation is \$250 or more. If a contributor has dealings with the City of Long Beach, then disqualification would be required as to decisions meeting the criteria contained in either Regulation 18702.1 or 18702.2.

^{3/} If PACOM is a nonprofit, tax-exempt charitable organization, reimbursement for expenses and per diem would not count toward this sum. (Section 82030(b)(2).)

^{4/} Once specific salary arrangements are made, please feel free to contact us again for more specific advice.

Salary

2. The analysis for question 1 also covers your second question.

Travel Expenses

3. Your third question concerns the appropriate use of public funds, to wit: reimbursement of Mr. Edgerton's PACOM-related expenses by the City of Long Beach while he is being paid and reimbursed by PACOM. This question is outside the scope of the Act. It is up to the city to determine whether it is appropriate to expend city funds for this purpose.

Use of City Staff

4. Your fourth question raises the issue of the appropriateness of Mr. Edgerton utilizing his city-paid staff for PACOM work during their off-duty hours. The off-duty work would be paid for with PACOM funds. Again, the question of whether this may be done is beyond the scope of the Act. However, if "release time" is to be obtained so that these city employees may do PACOM work, and if the ability to obtain such part-time services for PACOM will have a material financial effect upon either Mr. Edgerton or upon PACOM (assuming PACOM is a source of income to him), then Mr. Edgerton will have to disqualify himself from the decision to give his staff release time. That decision would need to be made by someone else within the city, without Mr. Edgerton's input or participation. We do not have sufficient facts at this time to provide more detailed guidance.

Travel Discounts

5. You have asked whether soliciting and accepting travel discounts for Mr. Edgerton and/or his city-paid staff is permitted. We believe that a provision of the California Constitution may be applicable, but we cannot provide specific advice as to its application. (See, Article XII, Section 7, Calif. Const. and 67 Ops. Cal. Atty. Gen. 81 (1984).) In addition, unless the provisions of the Stone Opinion, 3 FPPC Ops. 52, No. 77-003 (copy enclosed), are complied with, such discounts would constitute gifts within the meaning of Section 82028. If these gifts total \$250 to Mr. Edgerton or to any staff member, the individual who received this amount would be required to disqualify himself from participating in any decision having a reasonably foreseeable material financial effect upon the donor or any agent or intermediary.

Services and Supplies

6. You have asked whether Mr. Edgerton may receive "in-kind" services, supplies or equipment in connection with his position as PACOM marketing director from business entities having business dealings with the City of Long Beach. We are uncertain precisely what you mean by the term "in-kind." However, as used in the context of the campaign provisions of the Act, it refers to goods or services provided without charge. In the context of the conflict of interest provisions of the Act, this would constitute a gift. (Section 82028.) If the gift is given to Mr. Edgerton, he would be required to disqualify himself from participating in decisions affecting the donor entity under the circumstances discussed in the analysis of question 5. If the gift is given to PACOM, then it would not be a basis for potential disqualification unless the gift affected his salary. The determination of whether Mr. Edgerton or PACOM is the donee for a gift would depend upon all of the facts in a particular situation.

Bank Account

7. The opening of a bank account by Mr. Edgerton for purposes of drawing checks for PACOM expenses does not raise issues within the purview of the Act.

Private Employment

8. You have asked about the potential for disqualification if Mr. Edgerton accepts employment from private business entities doing business with the city or having decisions which come before the city council. If he receives income from any corporation or organization for performing consulting services as an individual, that entity will become a source of income once he receives \$250 or more in income. Consequently, he will be required to disqualify himself from participating in any decision which will have a reasonably foreseeable material financial effect upon any such source of income. (Sections 87100 and 87103(c); Regulations 18702.1 and 18702.2.)

In your letter, you have also indicated that Mr. Edgerton will be using his position as a Long Beach City Councilman as well as his position as PACOM marketing director to promote PACOM and to solicit private corporations to join and contribute funds to PACOM for its marketing endeavors. If Mr. Edgerton is paid for his services as marketing director of PACOM, he may not use his position as city councilmember to achieve those things which he is paid by PACOM to achieve. If there is a "nexus" between an official's private compensation

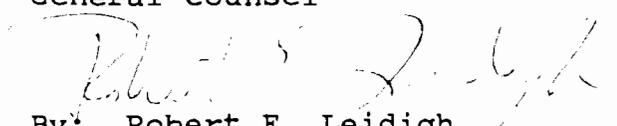
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and a particular governmental decision, a public official may not use his official position to accomplish those goals. (See, Regulation 18702(b)(3)(B).)

I trust that this letter adequately responds to your questions. If Mr. Edgerton desires further assistance in the future as the facts of his situation become clearer, he should have you write for further assistance at that time. Should you have questions regarding the advice contained in this letter, please do not hesitate to call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

REL:plh
Enclosures

OFFICE OF THE
CITY ATTORNEY
OF
LONG BEACH

JOHN R. CALHOUN
CITY ATTORNEY

ROBERT E. SHANNON
ASSISTANT

FEB 9 9 34 AM '87
February 3, 1987

MAIN OFFICE
City Hall
333 West Ocean Boulevard
Long Beach, California 90802
(213) 590-6061

HARBOR BRANCH OFFICE
Harbor Administration Building
Post Office Box 570
Long Beach, California 90801
(213) 590-4120

WORKERS' COMPENSATION SECTION
(213) 590-6583

Ms. Diane Grissiths
General Counsel
Fair Political Practices Commission
428 J Street
Suite 800
Sacramento, California 95814

Dear Ms. Grissiths:

The City of Long Beach is a member of the Pacific-Asian Congress of Municipalities (PACOM). Wallace Edgerton, an elected City Councilmember, represents the City of Long Beach in the PACOM organization. On December 9, 1986 Mr. Edgerton was selected by the PACOM Executive Committee as the PACOM Marketing Director for a term of three (3) years. Copies of the PACOM Executive Committee resolution establishing the position of Marketing Director and a PACOM bulletin announcing Mr. Edgerton's selection as Marketing Director are enclosed for your reference and use.

As the Marketing Director, Mr. Edgerton is accountable to the PACOM Executive Committee and is responsible for recruiting marketing members, including private sector corporations who seek to serve the Pacific basin, from whom the Marketing Director shall raise funds to finance the PACOM objective of facilitating Pacific Rim trade. These funds are in addition to the membership dues paid directly into PACOM's general fund. At the present time, the PACOM Marketing Director is an unpaid position. However, in the future, the Marketing Director may receive a monthly salary from PACOM or remuneration from some of the private corporations who are members of PACOM.

The Marketing Director will establish his marketing budget from money and in-kind support and assistance received from private sector corporations. He will maintain a bank account for purposes of drawing checks for PACOM expenses. The Marketing Director also contemplates entering into some contracts as an independent individual private contractor with some private sector corporations for his performance of certain personal services to further the interests of said corporations.

Mr. Edgerton will be using his position as a Long Beach City Councilman as well as his position as PACOM

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Marketing Director to promote the PACOM and to solicit private corporations to join and contribute funds to the PACOM for its marketing endeavors. Some of the corporations that would be interested in the PACOM objectives and prospective PACOM members are corporations which do business in Long Beach and obtain permits from and/or have leases or contractual relationships with the City which are subject to approval by the City Council and Mr. Edgerton as a City Councilmember.

Mr. Edgerton also contemplates the use of members of his City paid staff during their off-duty time to perform part-time services for the PACOM with compensation from PACOM funds. These City staff members would also be used in the course of their regular City duties to perform services in connection with activities relating to the City's PACOM membership. Mr. Edgerton contemplates that these City staff members would receive free passes or discounts from transportation companies for travel relating to PACOM activities and programs.

Your assistance and advice is requested with respect to the following questions:

1. May Councilmember Edgerton, acting as the paid or unpaid Marketing Director of PACOM, solicit funds, make contracts and otherwise deal with private corporations who also have business dealings with the City of Long Beach that are within the jurisdiction of the City Council?

2. Does the fact that the salary or reimbursement of the PACOM Marketing Director from funds solicited from private corporations who may also have matters before the Long Beach City Council create a conflict of interest?

3. May the City of Long Beach pay the travel expenses of the PACOM Marketing Director which are incurred in connection with the City's participation in PACOM activities, while at the same time the Marketing Director also receives pay and reimbursement from the PACOM? Would it make a difference if he did not receive remuneration or reimbursement from PACOM?

4. May the PACOM Marketing Director use his City paid staff members during their off-duty hours to perform

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part-time services for the PACOM and pay said persons with PACOM funds?

5. May Councilmember Edgerton personally accept for his own use or arrange for free passes or discounts to be furnished by transportation companies to his City paid staff members for travel in connection with PACOM activities? What about such free passes or travel discounts for Mr. Edgerton and/or his staff members for travel related to the City's participation in PACOM activities and programs?

6. May Councilmember Edgerton receive in-kind services, supplies, or equipment in connection with his position as PACOM Marketing Director or in his capacity as an individual private contractor from companies or organizations who have business dealings or other matters with the City or that are within the jurisdiction of the Long Beach City Council?

7. May Mr. Edgerton, whether he is paid or unpaid by PACOM, open, maintain and use a bank account for purposes of drawing checks for PACOM expenses?

8. May Councilmember Edgerton, with authorization from the PACOM Executive Committee, in his capacity as an individual, and not as the PACOM Marketing Director, enter into independent private personal service contracts to perform services for and receive remuneration from companies or organizations who may be members of PACOM and who also do business with the City or have matters that are within the jurisdiction of the City Council?

If you require additional information or desire to discuss this inquiry, please contact either Mr. Edgerton or our office. Mr. Edgerton's City Hall telephone number is (213) 590-6684.

Thank you for your cooperation and assistance in in this matter.

Very truly yours,


JOHN R. CALHOUN
CITY ATTORNEY

JRC:fl
Enclosures



PACIFIC—ASIAN CONGRESS OF MUNICIPALITIES

530 South King Street, Room 307 • Honolulu, Hawaii 96813 • (808) 523-4130

RESOLUTION ON THE ADMISSION OF PRIVATE CORPORATIONS TO THE PACIFIC-ASIAN CONGRESS OF MUNICIPALITIES

Whereas, the Pacific-Asian Congress of Municipalities (PACOM) links cities from throughout the Pacific Basin who share a common interest in exchanges for mutual benefit; and

Whereas, PACOM's member municipalities all face the challenge of economic development; and

Whereas, PACOM shares a belief in the mutual benefit of foreign trade which advances economic development; and

Whereas, PACOM will be strengthened if its membership base is enlarged, with more municipalities contributing their experiences, resources, and knowledge; and

Whereas, PACOM will further gain from the involvement of the private sector, especially corporations dedicated to serving the Pacific Basin and not just one particular nation; and

Whereas, new members will come to PACOM only if they know of PACOM's existence and its benefits for those who join;

NOW, THEREFORE BE IT RESOLVED, that the PACOM Executive Committee establish the position of Marketing Director, appoint someone to that position for a term of three years from this date, and hold that person accountable to the Executive Committee; and

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BE IT FURTHER RESOLVED, that the Marketing Director be charged with recruiting new members, including members from private sector corporations who seek to serve the Pacific Basin, and from whom s/he shall raise funds to finance the objectives of PACOM, providing that the use of these funds from the private sector will be subject to such financial controls and regulations as the Executive Committee shall require; and

BE IT FURTHER RESOLVED, that PACOM's corporate members will pay dues in the amount established by the Executive Committee, the dues to enter directly PACOM's general fund, along with dues payments by the municipalities; and

BE IT FURTHER RESOLVED, that PACOM's corporate members will be entitled to up to three representatives on the Executive Committee from corporations based in the Americas including Pacific Islands legally associated with American nations, and up to three representatives from corporations based in Asia, Oceania, and the Pacific Islands not associated with American nations.

December 9, 1986

PACOM



PACIFIC—ASIAN CONGRESS OF MUNICIPALITIES

530 South King Street, Room 307 • Honolulu, Hawaii 96813 • (808) 523-4130

FOR IMMEDIATE RELEASE
December 10, 1986
Contact: Galen Fox 523-4130

PACOM REUNITES AT HONOLULU MEETING

The Pacific-Asian Congress of Municipalities (PACOM) held a historic meeting of its Executive Committee at the Hilton Hawaiian Village Hotel in Honolulu, December 8-9, 1986. The meeting reunited the organization founded in Honolulu by Mayor Frank Fasi in 1971. It drew together the Honolulu-based PACOM and a separate branch of PACOM that had functioned under Australian control between 1979 and this year.

The PACOM Executive Committee represents 13 cities from 11 countries in Asia, North America, South America, Oceania and the Pacific. It includes those selected at a January 1986 PACOM General Meeting held in Honolulu, and a separate group chosen at a Sydney PACOM meeting in May 1986.

The two groups unanimously passed a resolution declaring Honolulu Hawaii "the Permanent Headquarters of PACOM." The resolution also proclaimed Mayor Fasi "the Executive Director of PACOM for a term of three years" starting December 9.

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PACOM is open to cities from around the Pacific Basin. During the 1970's it held successful congresses in Honolulu, Taipei, Seoul, and Manila that brought together up to 700 delegates from hundreds of municipalities.

Political problems relating to the China question divided the organization in 1979. By 1981, the split had become "permanent." Between 1981 and 1985, PACOM virtually ceased to function. When Mayor Fasi returned to office in 1985, he organized the PACOM revival meeting that took place this past January in Honolulu. The Australians held their own PACOM meeting last May. Both meetings passed unity resolutions that led to yesterday's successful Executive Committee session.

In addition to reuniting, the PACOM leadership group also opened up membership to corporations engaged in Pacific trade. The Executive Committee chose Councilman Wallace Edgerton of Long Beach, California, to work with the corporations as PACOM's Marketing Director. PACOM'S link to corporations underlines its current emphasis on economic development and trade promotion throughout the Pacific Basin.

The Executive Committee further decided to hold the next general meeting of PACOM in Honolulu in August 1987. This will be the first major meeting that will include private corporations as well as municipalities.