



California Fair Political Practices Commission

September 29, 1987

William R. Galstan
City Attorney
City Hall
P.O. Box 130
Antioch, California 94509-0504

Re: Your Request for Advice
Our File No. I-87-221

Dear Mr. Galstan:

You have requested advice regarding the application of the conflict of interest provisions of the Political Reform Act (the "Act")^{1/} to Antioch Mayor Joel Keller.

QUESTION

Is Mayor Keller disqualified from participating in decisions about a nonprofit corporation that employs his wife?

CONCLUSION

Mayor Keller is disqualified from participating in any decision that will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on a nonprofit corporation that employs his wife.

FACTS

Mayor Keller's wife is a volunteer for R.E.A.C.H., a nonprofit corporation that provides substance abuse counseling and services to adolescents and their families. Funding for R.E.A.C.H. is provided by the City of Antioch, the school district, Contra Costa County, the state Office of Criminal Justice Planning, client donations and income from fund-raising events.

R.E.A.C.H. has proposed hiring Mrs. Keller and funding her salary from the school district's grant. Mayor Keller wants to

^{1/} 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.

know if he will be disqualified from participating in decisions regarding R.E.A.C.H. should his wife become a paid employee.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way using his or her official position to influence a governmental decision in which he or she has a financial interest.

Mayor Keller is a public official. (Sections 82048 and 87200.) Should Mrs. Keller become a salaried employee for R.E.A.C.H., her employer will be a source of income to Mayor Keller because of his community property interest in his wife's income. (Section 82030(a).)

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on a source of income of \$250 or more received by or promised to the official within 12 months before the decision is made. (Section 87103(c).) If R.E.A.C.H. pays Mrs. Keller \$500 or more in salary, it will be a source of income of \$250 or more to Mayor Keller.

The Act's definition of "income" excludes salary received from a government agency (Section 82030(b)(2)), but R.E.A.C.H. is not a government agency. Using school district funding to pay Mrs. Keller's salary would not make her earnings excludable. Mayor Keller would be disqualified from participating in a decision before the city council that would affect R.E.A.C.H. significantly. (See Witt v. Morrow (1977) 70 Cal. App. 3d 817; Regulation 18702(b)(3)(D).)

R.E.A.C.H. appears before the city council when the council decides on grants and other contracts for payment of services to R.E.A.C.H. R.E.A.C.H. is a nonprofit corporation and we assume it has a small budget. Any decisions about contracts, funding or payments probably would have a significant financial effect on R.E.A.C.H. (See Cornelius Advice Letter, No. A-82-104, copy enclosed.) Consequently, Mayor Keller would be disqualified from participating in those types of decisions.^{2/} (Regulation 18702.1(a)(1).)

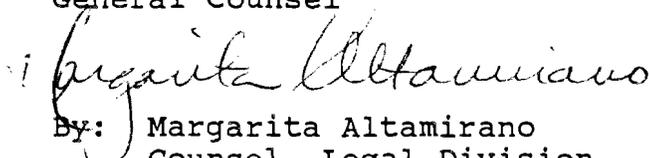
^{2/} If the decision involves a contract, the provisions of Government Code Section 1090 may apply. The Commission does not give advice about the application of Section 1090 because it is not part of the Political Reform Act.

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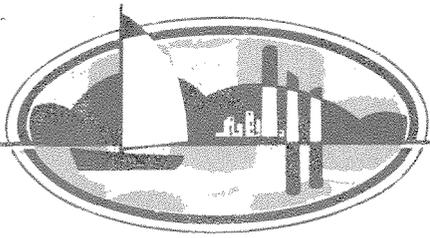
I hope this letter answers any questions Mayor Keller may have about Mrs. Keller's employment with R.E.A.C.H. Please call me at (916) 322-5901 if you have more questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:plh



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WILLIAM R. GAUSTAN
City Attorney

August 10, 1987

California Fair Political
Practices Commission
P.O. Box 807
Sacramento CA 95804-0807

Re: Request for Advice

Dear Sir or Madam:

Antioch Mayor Joel Keller has requested and authorized me to seek your opinion/advice on the following matter.

Mr. Keller is the directly-elected mayor of this general law city. For the last year, his wife Lorraine has served as a volunteer for the R.E.A.C.H. Project. R.E.A.C.H. is a nonprofit corporation that provides counselling and referral services to youths and their families with substance abuse problems. The organization also contracts with the City to provide intervention services.

Mrs. Keller has volunteered to provide talks on self-esteem to elementary grade students in the Antioch Unified School District. It is now being proposed that Mrs. Keller become a paid staff member of R.E.A.C.H. to continue providing the same services on a more concentrated basis.

R.E.A.C.H. has a variety of funding sources. It receives grants from the City, the school district, Contra Costa County, and the State Office of Criminal Justice. It also receives a lesser amount of private funds by way of donations from clients and from fund-raisers.

It is proposed that the school district direct R.E.A.C.H. to fund Mrs. Keller's future salary strictly from the grant of the school district, since she will be providing services exclusively to elementary school students.

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Mayor Keller inquires as to whether the potential income to Mrs. Keller would represent a reportable source of income for which he would have a conflict of interest in future matters dealing with R.E.A.C.H. and whether he would be able to continue to vote on matters such as the amount of City grants given to R.E.A.C.H. or contractual arrangements between R.E.A.C.H. and the City for police intervention cases.

Your prompt opinion or advice on this question will be very much appreciated.

Very truly yours,



WILLIAM R. GALSTAN
City Attorney

WRG/kw
cc: Mayor Keller

Memorandum

To : All Staff

Date : November 4, 1987

From : FAIR POLITICAL PRACTICES COMMISSION

Cynthia

Subject : Vending Machine

We are inquiring about getting a vending machine that would include a variety of candy, cookies, nuts and other little goodies. What I need from you is to know how many of you would be interested in something like this. Please mark yes _____ or no and return to me ASAP.

Thank you.

ADVICE LETTER 187-221 : VIRGIL MEIBERT : 5-5424

ANTI-CORRUPTION — OPINION ON MARYGAL

DRUG ABUSE COUNCILOR — self-esteem
\$1,000.

MAN HAVE QUIT.

BUDGET



California Fair Political Practices Commission

August 12, 1987

William R. Galstan, City Attorney
City Hall
P.O. 130
Antioch, CA 94509-0504

Re: 87-221

Dear Mr. Galstan:

Your letter requesting advice under the Political Reform Act was received on August 11, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:jaj