



California  
Fair Political  
Practices Commission

**SUPERSEDED**  
by 18702.1(2)(4)

July 28, 1988

Lawrence O. Eitzen  
P.O. Box 75  
Eureka, CA 95501

Re: Your Request For Advice  
Our File No. I-88-245

Dear Mr. Eitzen:

You have requested advice on behalf of the Board of Directors of the Fairhaven Fire District about application of the Political Reform Act (the "Act")<sup>1/</sup> to the duties of a board member married to a fire district employee.

Your question does not involve a specific pending governmental decision. Therefore, we treat your question as a request for informal assistance pursuant to Regulation 18329(c)(3)(D) and (F) (copy enclosed).<sup>2/</sup>

QUESTION

A member of the fire district board of directors is married to an assistant chief of the fire department. May she participate in personnel decisions that may affect her husband?

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

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

### CONCLUSION

A board member is disqualified from participating in board decisions to hire, fire, promote, demote, or discipline her husband or to set a salary for him which would be different from that of other employees in the same job classification. Otherwise, a board member may participate in personnel decisions that could adversely or beneficially affect her spouse, as long as all employees in the same job classification are affected in the same manner.

The provisions of Section 1090 may also affect a board member. The Commission does not administer this section. We refer you to the office of the Attorney General for advice regarding Section 1090.

### FACTS

A member of the Board of Directors of the Fairhaven Fire District is married to an assistant fire chief of the district. The fire district has three paid employees -- a chief and two assistant chiefs.

At each board meeting the board gives all employees the opportunity to discuss personnel matters with the board. Also, the board annually meets with and evaluates the work of each employee.

### ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using her official position 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 that will have a reasonably foreseeable material financial effect, different from the effect on the general public, on the official or a member of his or her immediate family or on a source of income of \$250 or more promised to or received by the official within 12 months before the decision. (Section 87103(c).)

Pursuant to Section 82030(b), "income" is defined to exclude salary from a government agency. Therefore, for the purposes of the Act, the board member does not have an economic interest in her husband's salary from the fire district. His position of assistant fire chief usually would not create a conflict of interest situation for her.

Even though the board member does not have an economic interest in her husband's salary, Section 87103 prohibits her from participating in decisions which would have a material financial effect on her husband. In this regard, Regulation 18702.1(a)(4) (copy enclosed) prohibits an official from participating in a decision if it is foreseeable that the decision would increase or decrease her income or that of her spouse by at least \$250. Nevertheless, subdivision (c)(2) of the same regulation is an exception to subdivision (a)(4). Subdivision (c)(2) provides the following:

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

(2) The decision only affects the salary, per diem, or reimbursement for expenses the official or his or her spouse receives from a state or local government agency. This subsection does not apply to decisions to hire, fire, promote, demote, or discipline an official's spouse, or to set a salary for an official's spouse which is different from salaries paid to other employees of the spouse's agency in the same job classification or position....

Regulation 18702.1(c)(2).

Therefore, the board member cannot participate in a decision to fire, promote, demote or discipline her husband. (Rice Advice Letter, No. A-88-053, copy enclosed.) She also is disqualified from participating in a decision that would increase or decrease her husband's salary only, and not the salary of other employees in his same job classification, by \$250 or more.

Nevertheless, the board member may participate in a decision about salaries for assistant fire chiefs, if the board does not treat her husband's salary differently from that of any other employee in the same job classification. (Plisky Advice Letter, No. A-86-149, copy enclosed.) She also may participate in other personnel decisions that do not single out her husband or affect him differently from other persons in his same job classification. This includes participating in collective bargaining decisions if fire district employees belong to a union.

Lawrence O. Eitzen  
July 28, 1988  
Page -4-

Section 1090 also may apply to a decision before the board.<sup>3/</sup> The Commission, however, does not administer this section. Therefore, we refer you to the Attorney General for advice regarding Section 1090. Other statutory and case law also may apply to the present situation. However, we administer the Act only and cannot advise you about the application of other state law.

I hope this letter satisfactorily answers your request for advice. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths  
General Counsel

*Diane M. Griffiths*  
By: Margarita Altamirano  
Counsel, Legal Division

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Enclosures

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<sup>3/</sup> Section 1090 prohibits a public official from making a contract in which he or she has a financial interest.

LAW OFFICE OF  
LAWRENCE O. EITZEN

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June 23, 1988

Margareta Altamirano  
California Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Altamirano:

I represent the Fairhaven Fire District, located in a very small town on the outskirts of the city of Eureka in northern California. The Fire District contains approximately fifty registered voters and is served by a five person Board of Directors. There are three paid employees of the Fire District, a chief and two assistant chiefs.

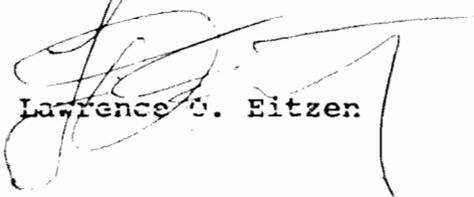
In November 1987, the wife of one of the assistant chiefs was elected without opposition to the Board of Directors. Since that time, the Board has had some difficulties arising from its efforts to avoid conflicts of interest. The Board meets once a month in the fire hall. It is the practice of the Board, at each meeting, to have a personnel session to provide all employees an opportunity to come before the Board with grievances or other personnel matters. In addition, on an annual basis, the Board has performance review sessions, at which it meets with individual employees and prepares an evaluation of their work.

Although in the present context, conflict of interest is narrowly defined under Section 1091.5(6) of the Government Code, the Board is aware that the "common law" conflict of interest rule proscribes any personal interest that would interfere with undivided allegiance. See, Miller v. City of Martinez, 28 Cal App 2nd 364, 368, and Noble v. City of Palo Alto, 89 Cal App 47, 51-52. Since there are only three employees, a decision affecting any one employee necessarily affects the others. To avoid conflicting loyalties, it has been the Board's position, based on advice from their legal counsel, that the spouse of the assistant fire chief should not be involved in personnel matters and should not be present at executive personnel sessions.

It has been suggested to the Board that it adopt regulations that would be uniformly applicable to all Board members. On behalf of the Board, I am writing to ask that you review this situation, including a 21-day investigation, if you feel it appropriate, and assist the Board in preparing appropriate regulations.

I thank you kindly.

Sincerely,



Lawrence G. Eitzen

LOE/jb