



California Fair Political Practices Commission

December 15, 1988

Maurice F. O'Shea
City Attorney
City of Bellflower
16600 Civic Center Drive
Bellflower, CA 90606-5494

Re: Your Request for Advice
Our File No. I-88-332

Dear Mr. O'Shea:

You have requested advice on behalf of City of Bellflower Councilmembers Randy Bomgaars and William J. Pendleton as to some reporting and conflict-of-interest aspects of the Political Reform Act (the "Act").^{1/} Because you have not asked a question about a specific pending decision, we are treating your request as one for informal assistance pursuant to Regulation 18329(c).^{2/}

QUESTIONS

1. Is Councilmember Bomgaars required to report payments he receives from the school district for work missed due to his duties as a councilmember on his annual statement of economic interests?

2. Is Councilmember Bomgaars disqualified from participating in decisions regarding the school district because of his position as a full-time teacher with the school district?

^{1/} 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.

^{2/} 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).)

3. Must Councilmember Bomgaars disclose trips taken utilizing "frequent flyer miles"^{3/} received as a result of city paid air travel on his annual statement of economic interests?

4. Is Councilmember Bomgaars disqualified from voting on payment for services rendered by a business to the city when the business has been loaned five thousand dollars by a business in which Councilmember Bomgaars is a partner?

5. Is Councilmember Pendleton disqualified from participating in decisions regarding an application for zoning changes by Southern California Edison Company ("Edison") due to his employment with Edison and ownership of Edison stock?

6. Is Councilmember Pendleton disqualified from participating in decisions regarding payment of routine electric utility bills to Edison?

CONCLUSIONS

1. Councilmember Bomgaars is not required to report payments he receives from the school district for work missed due to his duties as a councilmember on his annual statement of economic interests.

2. The Act does not require Councilmember Bomgaars to disqualify himself from participating in decisions regarding the school district unless the decision will have a material financial effect on Councilmember Bomgaars. You should seek advice from the Attorney General's office if you are concerned about the effect of Section 1090 or other laws on Mr. Bomgaars' participation in decisions regarding the school district.

3. Trips taken by city councilmembers utilizing frequent flyer miles need not be disclosed on the annual statement of economic interests.

4. Because Councilmember Bomgaars owns 10% or more of the partnership, he must disqualify himself from voting on payment for services provided to the city by a business which is the recipient of a five thousand dollar (\$5,000) loan from Councilmember Bomgaars' partnership business.

5. Councilmember Pendleton must disqualify himself from voting on an application for zoning changes submitted by Edison.

^{3/} The "mileage plus" or "travel bonus credits" which you have referred to in your letter are referred to here as "frequent flyer miles."

6. Councilmember Pendleton must disqualify himself from voting on payments for routine electric utility bills from Edison unless it is determined that the decision regarding payment of the bills will have no financial effect on Edison.

FACTS AND ANALYSIS

1. Councilmember Bomgaars is employed by the Bellflower Unified School District as a full-time teacher. The school district is considering paying Councilmember Bomgaars for work missed due to his duties as a councilmember. It will permit Councilmember Bomgaars to take an additional 20 days of paid leave per year to enable him to attend to those duties. Councilmember Bomgaars is questioning whether he must disclose these payments as additional income on his annual statement of economic interests.

On the statement of economic interests, elected officials are required to disclose, among other things, certain sources of income received during the period covered by the statement. (Section 87203.) The term "income" is defined in Section 82030. (Copy enclosed.) Section 82030 provides, in part, that income does not include:

(2) Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency....

(Section 82030(b)(2).)

Since income excludes salary and reimbursement from a local government agency, payments received from the school district are not income, as that term is defined in Section 82030. Councilmember Bomgaars is therefore not required to report payments received from the school district for work missed due to his duties as a city councilmember.

2. Periodically, matters dealing with the school district will come to the city council for consideration (e.g. city sponsored recreation programs on school properties). Is Councilmember Bomgaars required to disqualify himself because of a conflict of interest if such matters pertaining to the school district come before the city council?

Section 87100 prohibits a public official from making, participating in, or using his official position to influence any governmental decision in which he has a financial interest. An 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 the official or a 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)
(emphasis added).)

Presumably, Councilmember Bomgaars receives a salary for his work as a teacher for the school district. He may also receive a salary as a city councilmember. For purposes of the Act salary and reimbursement for expenses or per diem from a government agency are not considered income. (Section 82030(b)(2).) Therefore, the school district is not a source of income to Councilmember Bomgaars for purposes of Section 87103(c).

Section 87103(d) requires Councilmember Bomgaars to disqualify himself from participating in decisions which would foreseeably and materially affect any business entity in which he is an officer or employee. Again this provision does not apply to Councilmember Bomgaars situation. A government agency is not a "business entity" for purposes of the Act. (Section 82005.) Thus his employment with the school district is not a disqualifying financial interest for purposes of Section 87103(d). Disqualification will be required only if a decision will have a reasonably foreseeable material financial effect on Mr. Bomgaars income. (Section 87103.) A decision will be considered to have a material financial effect on Mr. Bomgaars if it will affect his personal expenses, income, assets or liabilities by \$250 or more. (Regulation 18702.1(a)(4) (copy enclosed).)

Your letter does not mention whether the city council would be required to vote on contracts with the school district. Section 1090 restricts the conduct of public officials in making government contracts. Section 1090 is not part of the Act, thus we cannot advise you about Councilman Bomgaars'

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duties under that law. Any questions about Section 1090 should be addressed to the Attorney General.

3. Occasionally, councilmembers accumulate frequent flyer miles as a result of city-paid air travel. Since the ticket for the air travel was purchased with public funds, you have asked us to determine whether these frequent flyer miles belong to the city or to the councilmember. You have also asked whether trips utilizing such frequent flyer miles violate the constitutional prohibition against free or discounted travel by public officials. In our telephone conversation on September 13, 1988, you questioned whether the councilmember would have to disclose any trips taken utilizing these frequent flyer miles "as a gift or as additional income" on the annual statement of economic interests.

Section 82028 defines gifts for purposes of the Act to include rebates or discounts in the price of anything of value. If the rebate or discount is made in the regular course of business to members of the public without regard to official status, then the rebate or discount is not considered a gift. (Section 82028.) The frequent flyer miles are such a rebate or discount plan offered to the public. Therefore the frequent flyer miles offered by the airlines are not gifts to the councilmember and would not have to be disclosed as such on the annual statement of economic interests.

Section 82030 defines income as:

... a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater.

(Section 82030(a).)

Air travel utilizing the frequent flyer miles is not income to the councilmember as the term is defined above and therefore would not have to be disclosed on the annual statement of economic interests.

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We are unable to respond to your question whether the frequent flyer miles belong to the city or to the councilmember since it is beyond the purview of the Act.

Article XII, Section 7, of the California Constitution states in relevant part that "[a] transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer ... shall work a forfeiture of that office." You have asked whether air travel by a councilmember utilizing the frequent flyer miles would be in violation of this constitutional prohibition. We are unable to respond to this question as well since it is beyond the scope of the Act. A copy of an Attorney General's opinion on the subject matter is enclosed for your information.

4. Councilmember Bomgaars owns a partnership interest of 10% or more in a business which leases out residential property. The partnership has loaned five thousand dollars (\$5,000) to another business. This business occasionally does work for the city, and consequently the city council is required to vote on payment for services provided by the business. Is Councilmember Bomgaars disqualified from participating in the decision regarding payment for services provided by the business?

As discussed above, Section 87100 prohibits a public official from making or participating in making any governmental decision in which he has a financial interest. Section 87103(c) provides that an official has a financial interest in a decision if it has a foreseeable and material financial effect on "[a]ny source of income ... 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), emphasis added.) Since Councilmember Bomgaars has a 10-percent or greater interest in the partnership, the pro-rata share of his interest in the loan is five hundred dollars or more (10% multiplied by five thousand dollars, the amount of the loan). (Section 82030(a).) Pursuant to Section 87103(c), Councilmember Bomgaars therefore has an economic interest in the decision.

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App. 3d 983,

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989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed.) It is clearly foreseeable that the decision, whether or not to approve payment for services provided, will have a financial effect on the business.

Material Financial Effect

Regulation 18702.1 (copy enclosed) states in relevant part that the effect of a decision is material if:

Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency

Regulation 18702.1(a)(1).

The business is directly involved in the decision when the city council makes a decision on whether to approve payment for services provided by the business. (Regulation 18702.1(b).) Therefore Councilmember Bomgaars must disqualify himself from participating in the decision regarding payment for services provided by the business.

5. Southern California Edison Company may submit an application to the City of Bellflower for zoning changes on its property. Councilman Pendleton is employed by Edison. He is not a member of any decisionmaking board or administrative board of Edison. He also owns stock in Edison, the value of which exceeds one hundred thousand dollars (\$100,000). Is Councilman Pendleton required to disqualify himself due to a conflict of interest because he is employed by and owns stock in Edison?

As stated above, Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An 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 the official or any member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

. . .

(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(a), (c) and (d)

The discussion regarding foreseeability with respect to Councilmember Bomgaars is applicable here as well. The effects of a decision are reasonably foreseeable if there is a substantial likelihood they will occur.

Regulation 18702.1 provides in relevant part that the effect of a decision will be material if any of the following applies:

(1) Source of Income or Gifts - Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency

(2) Investment in Business Entity - Any business entity (other than one covered by Section 18702.2(a) or (b) in which the official has a direct or indirect investment of \$1,000 or more, any business entity covered by Section 18702.2(a) or (b) in which an official has a direct or indirect investment of \$10,000 or more, or any business entity in which the official in an officer, director, partner, trustee, employee, or holds any position of management, is directly involved in a decision before the official's agency; or

Regulation 18702.1(a)(1) and
(a)(2)

Pursuant to subdivision (a)(1) of Regulation 18702.1, since Councilmember Pendleton has received income from Edison

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presumably of \$250 or more in the preceding 12 months, the effect of the decision will be material if Edison is directly involved in the decision. Edison is directly involved in the decision if it initiates the proceeding in which the decision will be made by filing an application requesting zoning changes for its property. (Regulation 18702.1(b).) Accordingly, Councilmember Pendleton must disqualify himself from participating in the decision on Edison's application for zoning changes if the decision will have a reasonably foreseeable financial effect on Edison.^{4/}

6. The City of Bellflower is served by Edison and the city council is called upon to approve routine electric utility bills submitted by Edison. Is Councilman Pendleton disqualified from participating in decisions regarding payment of routine electric utility bills to Edison?

As discussed above, Councilmember Pendleton may not participate in a decision if it will have a foreseeable and material financial effect on Councilmember Pendleton or on Edison. It is clearly foreseeable that payment or non-payment of the electric bills will have an economic effect on Edison. As discussed above, since Edison would be directly involved in the decision before the city council, it is also clear that the effect of the decision will be material. (Regulation 18702.1(a)(1) and (2).) Therefore, Councilmember Pendleton must disqualify himself from participating in the decision unless the decision will have no financial effect on Edison. (Regulation 18702.1(c)(2).)

Presumably payment or nonpayment of the electric utility bills by the City of Bellflower would result in an increase or decrease in gross revenues for Edison. In the past, the Commission has been advised by the Public Utilities Commission (PUC) that special tariffs on major regulated public utilities eliminate any effects on annualized gross revenues resulting from increases in sales of electricity. (See Lauterer Advice Letter, No. A-85-124, copy enclosed.) Special "balancing accounts" are set up by the PUC for each major electric utility including Edison which are designed so utilities will not be affected by changes in sales resulting from more customers. (Id.) You should seek advice from Edison whether payment or

^{4/} Councilmember Pendleton's status as an employee of Edison, and/or his ownership of over \$100,000 of Edison stock would similarly dictate that he disqualify himself from participating in the decision. (Regulation 18702.1(a)(2).)

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nonpayment of electric utility bills by the City of Bellflower would have any financial effect on that utility.

I hope this letter provides Councilmen Bomgaars and Pendleton with the guidance they have requested in determining their responsibilities under the Act. If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeevan Ahuja
Counsel, Legal Division

DMG:JA:ld

Enclosures



California Fair Political Practices Commission

August 29, 1988

Maurice F. O'Shea
City Attorney
16600 Civic Center Drive
Bellflower, CA 90706-5494

Re: 88-332

Dear Mr. O'Shea:

Your letter requesting advice under the Political Reform Act was received on August 26, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja, 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. Code of Regs. 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,

Diane M. Griffiths
Diane M. Griffiths
General Counsel

DMG:plh



California Fair Political Practices Commission

December 15, 1988

Maurice F. O'Shea
City Attorney
City of Bellflower
16600 Civic Center Drive
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Re: Your Request for Advice
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CONCLUSIONS

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FACTS AND ANALYSIS

1. Councilmember Bomgaars is employed by the Bellflower Unified School District as a full-time teacher. The school district is considering paying Councilmember Bomgaars for work missed due to his duties as a councilmember. It will permit Councilmember Bomgaars to take an additional 20 days of paid leave per year to enable him to attend to those duties. Councilmember Bomgaars is questioning whether he must disclose these payments as additional income on his annual statement of economic interests.

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(Section 82030(b)(2).)

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(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)
(emphasis added).)

Presumably, Councilmember Bomgaars receives a salary for his work as a teacher for the school district. He may also receive a salary as a city councilmember. For purposes of the Act salary and reimbursement for expenses or per diem from a government agency are not considered income. (Section 82030(b)(2).) Therefore, the school district is not a source of income to Councilmember Bomgaars for purposes of Section 87103(c).

Section 87103(d) requires Councilmember Bomgaars to disqualify himself from participating in decisions which would foreseeably and materially affect any business entity in which he is an officer or employee. Again this provision does not apply to Councilmember Bomgaars situation. A government agency is not a "business entity" for purposes of the Act. (Section 82005.) Thus his employment with the school district is not a disqualifying financial interest for purposes of Section 87103(d). Disqualification will be required only if a decision will have a reasonably foreseeable material financial effect on Mr. Bomgaars income. (Section 87103.) A decision will be considered to have a material financial effect on Mr. Bomgaars if it will affect his personal expenses, income, assets or liabilities by \$250 or more. (Regulation 18702.1(a)(4) (copy enclosed).)

Your letter does not mention whether the city council would be required to vote on contracts with the school district. Section 1090 restricts the conduct of public officials in making government contracts. Section 1090 is not part of the Act, thus we cannot advise you about Councilman Bomgaars'

duties under that law. Any questions about Section 1090 should be addressed to the Attorney General.

3. Occasionally, councilmembers accumulate frequent flyer miles as a result of city-paid air travel. Since the ticket for the air travel was purchased with public funds, you have asked us to determine whether these frequent flyer miles belong to the city or to the councilmember. You have also asked whether trips utilizing such frequent flyer miles violate the constitutional prohibition against free or discounted travel by public officials. In our telephone conversation on September 13, 1988, you questioned whether the councilmember would have to disclose any trips taken utilizing these frequent flyer miles "as a gift or as additional income" on the annual statement of economic interests.

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(Section 82030(a).)

Air travel utilizing the frequent flyer miles is not income to the councilmember as the term is defined above and therefore would not have to be disclosed on the annual statement of economic interests.

We are unable to respond to your question whether the frequent flyer miles belong to the city or to the councilmember since it is beyond the purview of the Act.

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4. Councilmember Bomgaars owns a partnership interest of 10% or more in a business which leases out residential property. The partnership has loaned five thousand dollars (\$5,000) to another business. This business occasionally does work for the city, and consequently the city council is required to vote on payment for services provided by the business. Is Councilmember Bomgaars disqualified from participating in the decision regarding payment for services provided by the business?

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Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App. 3d 983,

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989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed.) It is clearly foreseeable that the decision, whether or not to approve payment for services provided, will have a financial effect on the business.

Material Financial Effect

Regulation 18702.1 (copy enclosed) states in relevant part that the effect of a decision is material if:

Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency

Regulation 18702.1(a)(1).

The business is directly involved in the decision when the city council makes a decision on whether to approve payment for services provided by the business. (Regulation 18702.1(b).) Therefore Councilmember Bomgaars must disqualify himself from participating in the decision regarding payment for services provided by the business.

5. Southern California Edison Company may submit an application to the City of Bellflower for zoning changes on its property. Councilman Pendleton is employed by Edison. He is not a member of any decisionmaking board or administrative board of Edison. He also owns stock in Edison, the value of which exceeds one hundred thousand dollars (\$100,000). Is Councilman Pendleton required to disqualify himself due to a conflict of interest because he is employed by and owns stock in Edison?

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(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

. . .

(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(a), (c) and (d)

The discussion regarding foreseeability with respect to Councilmember Bomgaars is applicable here as well. The effects of a decision are reasonably foreseeable if there is a substantial likelihood they will occur.

Regulation 18702.1 provides in relevant part that the effect of a decision will be material if any of the following applies:

(1) Source of Income or Gifts - Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency

(2) Investment in Business Entity - Any business entity (other than one covered by Section 18702.2(a) or (b) in which the official has a direct or indirect investment of \$1,000 or more, any business entity covered by Section 18702.2(a) or (b) in which an official has a direct or indirect investment of \$10,000 or more, or any business entity in which the official in an officer, director, partner, trustee, employee, or holds any position of management, is directly involved in a decision before the official's agency; or

Regulation 18702.1(a)(1) and
(a)(2)

Pursuant to subdivision (a)(1) of Regulation 18702.1, since Councilmember Pendleton has received income from Edison

presumably of \$250 or more in the preceding 12 months, the effect of the decision will be material if Edison is directly involved in the decision. Edison is directly involved in the decision if it initiates the proceeding in which the decision will be made by filing an application requesting zoning changes for its property. (Regulation 18702.1(b).) Accordingly, Councilmember Pendleton must disqualify himself from participating in the decision on Edison's application for zoning changes if the decision will have a reasonably foreseeable financial effect on Edison.^{4/}

6. The City of Bellflower is served by Edison and the city council is called upon to approve routine electric utility bills submitted by Edison. Is Councilman Pendleton disqualified from participating in decisions regarding payment of routine electric utility bills to Edison?

As discussed above, Councilmember Pendleton may not participate in a decision if it will have a foreseeable and material financial effect on Councilmember Pendleton or on Edison. It is clearly foreseeable that payment or non-payment of the electric bills will have an economic effect on Edison. As discussed above, since Edison would be directly involved in the decision before the city council, it is also clear that the effect of the decision will be material. (Regulation 18702.1(a)(1) and (2).) Therefore, Councilmember Pendleton must disqualify himself from participating in the decision unless the decision will have no financial effect on Edison. (Regulation 18702.1(c)(2).)

Presumably payment or nonpayment of the electric utility bills by the City of Bellflower would result in an increase or decrease in gross revenues for Edison. In the past, the Commission has been advised by the Public Utilities Commission (PUC) that special tariffs on major regulated public utilities eliminate any effects on annualized gross revenues resulting from increases in sales of electricity. (See Lauterer Advice Letter, No. A-85-124, copy enclosed.) Special "balancing accounts" are set up by the PUC for each major electric utility including Edison which are designed so utilities will not be affected by changes in sales resulting from more customers. (Id.) You should seek advice from Edison whether payment or

^{4/} Councilmember Pendleton's status as an employee of Edison, and/or his ownership of over \$100,000 of Edison stock would similarly dictate that he disqualify himself from participating in the decision. (Regulation 18702.1(a)(2).)

Maurice F. O'Shea
December 15, 1988
Page 10

nonpayment of electric utility bills by the City of Bellflower would have any financial effect on that utility.

I hope this letter provides Councilmen Bomgaars and Pendleton with the guidance they have requested in determining their responsibilities under the Act. If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeevan Ahuja
Counsel, Legal Division

DMG:JA:ld

Enclosures



California Fair Political Practices Commission

August 29, 1988

Maurice F. O'Shea
City Attorney
16600 Civic Center Drive
Bellflower, CA 90706-5494

Re: 88-332

Dear Mr. O'Shea:

Your letter requesting advice under the Political Reform Act was received on August 26, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja, 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. Code of Regs. 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,

Kathryn E. DeWitt
Diane M. Griffiths
General Counsel

DMG:plh



CITY OF
BELLFLOWER

16600 CIVIC CENTER DRIVE
BELLFLOWER CALIFORNIA 90706-5494
(213) 804-1424

M. G. "MIKE" BRASSARD
MAYOR
KENNETH J. CLEVELAND
MAYOR PRO TEMPORE
JOHN ANSDELL
COUNCILMAN
JOSEPH E. CVETKO
COUNCILMAN
WILLIAM J. PENDLETON
COUNCILMAN

August 24, 1988

Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95814

RE: City of Bellflower
Request For Informal Assistance

Dear Commissioner:

This letter is written on behalf of two City Councilman regarding several issues as to possible conflict of interests.

Councilman Bomgaars poses these questions:

1. He was recently elected to the City Council. He is employed by the Bellflower Unified School District as a full-time teacher. The School District is a separate entity; the City has no jurisdiction over school matters and visa-versa.

a) The School District is considering a provision whereby, if Mr. Bomgaars misses work because of councilmatic duties, they will pay him "release time" for a certain amount of time. He queries whether this would have to be disclosed as additional income on his annual Statement of Economic Interests.

I feel that, since it is part of his public employment compensation, it need not be disclosed, however he is desirous of your comment.

b) Periodically matters dealing with the School District will come to the City Council for consideration, e.g., joint programs whereby the City sponsors recreation programs and activities or school properties.

Again, I have opined that since he has no decision making authority or administrative capacity with the School District, there appears to be no conflict issue unless it directly affected his duties as a school teacher. Please advise.

c) There are occasions when the City Council will make authorized, city-paid air trips to various parts of the country. Many airlines have "mileage plus" or travel bonus credits when tickets are purchased that accumulate and can result in "free travel."

- Does the credit for the travel or subsequent "free travel" belong to the City since the ticket was purchased with public funds?

- If not, must the "free travel" be disclosed and thus in violation of the free airline travel provisions?

d) Councilman Bomgaars has a partnership business, the only activity is the ownership of a residential property that they lease out and is not located in the City of Bellflower. The partnership made a loan of Five Thousand Dollars (\$5,000.00) to a totally unrelated business operated by a third party. The third party occasionally does work for the City.

- Should Councilman Bomgaars abstain from voting on the payment for such services? The services are retained strictly on an administrative purchase order basis and does not involve councilmatic action.

2. Councilman Pendleton is a supervisor with Southern California Edison Company and has been employed with them for many years. As such he has acquired stock, the value of which exceeds One Hundred Thousand Dollars (\$100,000.00). He is not a member of any decision making board or administrative board of the Edison Company.

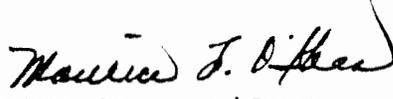
- It would appear that pursuant to your opinion in IFPPC 54 that he is precluded from participating in the decision making process of any zone changes, etc.

Fair Political Practices Commission
August 24, 1988
Page Three

- The City uses the Edison Company for its electric utility services. Should he abstain from payment approval of the normal and usual monthly charges for energy services?

I represent that both Councilmen Bomgaars and Pendleton have requested that I seek your advice in these matters and there are no zone changes or other such applications pending before the City Council.

Very truly yours,


MAURICE F. O'SHEA
City Attorney
City of Bellflower

cc: William J. Pendleton
Randy Bomgaars

MFO/da



CITY OF BELLFLOWER

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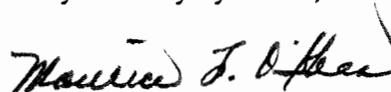
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Fair Political Practices Commission
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MAURICE F. O'SHEA
City Attorney
City of Bellflower

cc: William J. Pendleton
Randy Bomgaars

MFO/da