



California Fair Political Practices Commission

September 5, 1989

Richard S. Platz
City Attorney
P.O. Box 797
Blue Lake, CA 95525

Re: Your Request for Advice
Our File No. A-89-414

Dear Mr. Platz:

You have requested advice on behalf of Mr. Thomas Sheets concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act")¹ to his duties as a member of the Blue Lake City Council. The following advice is based upon the facts provided in your letter and our telephone conversation of August 7, 1989.

Our advice is limited to provisions of the Act. We cannot provide advice about other conflict-of-interest laws, such as Government Code Section 1090.

QUESTIONS

1. You are the city attorney and employ Joyce Sheets, the wife of Councilmember Sheets, as your secretary. Since you are a source of income to Mr. Sheets, must he disqualify himself from participating in any decisions to approve your monthly warrant for legal services rendered?
2. Must Mr. Sheets disqualify himself from participating in any negotiations regarding the city attorney's hourly rate for legal services rendered?
3. Must Mr. Sheets disqualify himself from participating in any other decisions which will generate work for the city attorney?

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.

CONCLUSIONS

1. Mr. Sheets must disqualify himself from participating in any decisions to approve the city attorney's monthly warrant for legal services rendered.

2. Mr. Sheets must disqualify himself from participating in negotiations regarding the city attorney's hourly rate for legal services rendered.

3. Mr. Sheets must disqualify himself from participating in any decision which will have a material financial effect, as set forth in Regulation 18702.2(g), on the city attorney's law practice.

FACTS

You have a private law practice and have served as the city attorney for Blue Lake since 1976. Joyce Sheets, your secretary, is married to a recently-elected city councilmember, Mr. Thomas Sheets.

You have never had a written contract with the City of Blue Lake and you serve at the pleasure of the city council. The city compensates you at an hourly rate, which is negotiated, for legal services rendered. At the end of each month, you submit a billing statement, which is usually in excess of \$1,000, to the city. At the first meeting of the following month, the city council usually passes a motion to pay the warrants. Recently, you advised that the warrant for your bill be separated and considered independently from the other warrants.

You have recommended to Mr. Sheets that he must disqualify himself from participating in the decision to pay the warrant for your legal services. You have also advised him that he must disqualify himself whenever your hourly rate is negotiated. Additionally, you have advised Mr. Sheets that he must disqualify himself from decisions which will generate work for you and have a financial impact on your law practice.

ANALYSIS

The Act prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) 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 its effect on the public generally, on the official or a member of his immediate family or on, among other things:

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

(b) Any real property in which the public official has a direct or indirect interest 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.)

Since you employ Joyce Sheets as your secretary, your law practice is a source of income to Mr. Sheets. Income is defined in Section 82030(a) 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.

(Emphasis added.)

Since your law practice is a source of more than \$250 in annual income to Mr. Sheets, Councilmember Sheets may not participate in any decision if it is reasonably foreseeable that the decision will have a material financial effect on your law practice.

We must determine if the effect of the decision to pay your warrants or negotiate your hourly fee is "material." Regulation 18702.1 (copy enclosed) contains guidelines for determining if the effect of a decision is material when an official's economic interest is directly involved in the decision. Pursuant to Regulation 18702.1, the effect of a decision is material if:

(a) (1) ...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 or there is a nexus (as defined in subdivision (d)) between the purpose for which the official receives income and the governmental decision; or

* * *

(b) A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent:

* * *

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

Under Regulation 18702.1(a) (1), decisions concerning your hourly fee or payment of your warrants will materially affect your law practice, since your law practice is directly involved in, and is the subject of, the city council's monthly decision to approve the warrant for your fees. Accordingly, Mr. Sheets must disqualify himself from any decision regarding the payment of your monthly fees or negotiation of your hourly rate.

You have also asked if Mr. Sheets must disqualify himself from other decisions which may generate work for you and have a financial impact on your law practice. For example, if the city council votes to approve an easement, must Mr. Sheets disqualify himself, since implicit in the approval of the easement, is the fact that you will draft the easement.

Regulation 18702.2 sets forth the guidelines to determine a material financial effect for a business entity which is indirectly involved in a decision. Under subdivision (g), the effect of a decision is material as to a business entity in which an official has an economic interest if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

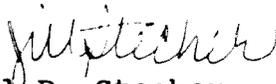
For purposes of interpretation of the Act, Mr. Sheets' community property income from your law practice is considered an economic interest in your law firm. You have posed a general question and we do not have any facts regarding any specific decisions. Therefore, each decision which will generate work for your law practice must be analyzed according to the dollar threshold levels set forth above, and if any of those thresholds is met, Mr. Sheets must disqualify himself from the decision.

This letter does not address conflict-of-interest matters covered by laws, such as Government Code Section 1090, which are not part of the Act. We suggest that you contact the Attorney General's office if you require advice on Section 1090.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Jill R. Stecher
Counsel, Legal Division

KED:JRS:plh

Enclosure

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Jul 13 12 09 PM '89

RICHARD S. PLATZ
ATTORNEY AT LAW
241 RAILROAD AVENUE
POST OFFICE BOX 797
BLUE LAKE, CALIFORNIA 95525

(707) 608-5697

July 11, 1989

Mr. John H. Larson, Chairman
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Re: Request for formal written advice

Dear Mr. Larson:

I have served as City Attorney for the City of Blue Lake, California, continuously since 1976. My secretary of approximately three years is married to a recently elected City Council member. Under the Fair Political Practices Act, I believe I am therefore a "source of income" to that council member. Various questions arise because of this situation.

I have never had a written contract with the City of Blue Lake. I serve at the pleasure of the City Council, and the City Council is legally free to employ other counsel at any time in the future. The City compensates me for legal services rendered at an hourly rate which is agreed upon from time to time. At the end of each month I submit a billing statement to the City, and at the first meeting of the following month the City Council usually passes a motion to pay the warrants, including a warrant for the bill which I have submitted.

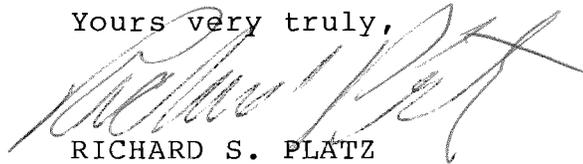
I am recommending to the council member that he must disqualify himself from participation in the decision to pay the warrant for my legal services rendered in the prior month. Each such billing is usually in excess of \$1,000.00. In addition, I am advising him that he must disqualify himself whenever my hourly rate is negotiated.

The more troublesome question arises as to which other decisions, if any, the council member must disqualify himself from because they might have a foreseeable material affect upon me, a source of income to the council person. Pending receipt of formal written advice from you, I am advising the council member that he must examine each discretionary

decision to determine whether it might have an impact of \$1,000.00 or more on my law practice. If so, he must disqualify himself. I am advising him that separate decisions are not cumulative, but that each decision should be examined separately. For example, a decision to refer an ordinance to me for rewriting, which will clearly involve less than \$1,000.00 in fees, does not require a disqualification, notwithstanding the fact that several other council decisions during the month, or even during a single meeting, might in the aggregate foreseeably produce income to me of more than \$1,000.00.

Please review this fact situation and send me formal written advice as to what disqualifications are required by the council member under the circumstances. If the advice I have given the council member is correct, please confirm that fact. If incorrect, kindly give me a correct interpretation.

Yours very truly,



RICHARD S. PLATZ

RSP/js

cc: Karen Nessler, City Clerk



California Fair Political Practices Commission

July 14, 1989

Richard S. Platz
Attorney at Law
P.O. Box 797
Blue Lake, CA 95525

Re: Letter No. 89-414

Dear Mr. Platz:

Your letter requesting advice under the Political Reform Act was received on July 13, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher 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,

A handwritten signature in cursive script, appearing to read "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh

FPPC

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RICHARD S. PLATZ
ATTORNEY AT LAW
241 RAILROAD AVENUE
POST OFFICE BOX 797
BLUE LAKE, CALIFORNIA 95525
(707) 608-5997

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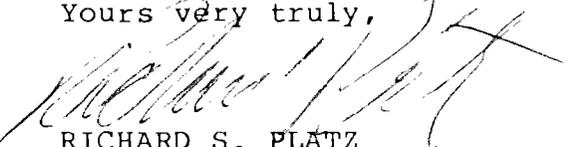
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Yours very truly,

A handwritten signature in cursive script, appearing to read "Richard S. Platz", written in dark ink.

RICHARD S. PLATZ

RSP/js

cc: Karen Nessler, City Clerk