



California Fair Political Practices Commission

October 10, 1989

Martha M. Norton
26 El Caminito Del Norte
Monterey, CA 93940

Re: Your Request for Informal Assistance
Our File No. I-89-532

Dear Ms. Norton:

You have requested written advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your question is general in nature and does not involve a specific decision, we are treating your request as one for informal assistance pursuant to Regulation 18329(c).²

QUESTION

As a candidate for school board, do you face conflict-of-interest problems because your husband is working part-time for the district as an independent contractor under an early retirement consultant contract?

CONCLUSION

The fact that your husband is under contract to the school district will not prevent you from participating in decisions affecting the district. However, you will have to disqualify yourself from certain decisions relating to your husband's contract.

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).)

FACTS

You are a candidate for a seat on the Monterey Peninsula Unified School District Board. Your husband is a retired mathematics teacher. He is currently working part-time for the district as an early retirement consultant and is classified as an independent contractor. The nature of the work performed is substitute teaching. He is working under a contract which was accepted in the fall of 1987. The conditions of the contract are not subject to change.

You are concerned that his status as an independent contractor for the district may create a conflict of interest which might preclude you from continuing as a candidate or from serving on the school board.

ANALYSIS

If you are elected to the school board, you will be a public official who is subject to the conflict-of-interest provisions of the Act. (Section 82048; Regulation 18700, copy enclosed.) The Act prohibits public officials from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.)

Whether an official has a financial interest in a decision is governed by Section 87103, which provides as follows:

An official has a financial interest in a decision within the meaning of Section 87100 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 or her 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.

Section 87103(c).

Under the Act, you are not prohibited from serving as a member of the school board while your husband is a retirement consultant for the district. However, there may be circumstances in which you must disqualify yourself from participating in particular governmental decisions.

For the purposes of this analysis, we will assume that your husband's earnings from the school district are community property. Under the Act, "income" includes any community property interest in the income of a spouse. (Section 82030(a).) However, the Act excludes salary and per diem from a governmental agency from the definition of "income." (Section 82030(b)(2).) A school district is a governmental agency under the Act. (Section 82041.) While your husband is technically classified as an independent contractor, the fees that he receives under the contract are in the nature of compensation for services. We have previously found such compensation to be in the nature of salary and excludable from income under Section 83030(b)(2). (Ritchie Advice Letter, No. A-79-045; Lyon Advice Letter, No. A-88-391, copies enclosed.) Therefore, your husband's position as a retirement consultant for the school district will generally not create a conflict of interest situation for you.

Regulation 18702.1(a)(4) (copy enclosed) prohibits a public official from participating in any decision which would foreseeably increase or decrease the personal expenses, income, assets or liabilities of the official or his or her immediate family by at least \$250. However, the regulation further provides:

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

(1) 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, you will only have to disqualify yourself from decisions before the district which affect your husband uniquely

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in a manner similar to the examples set forth in the regulation.
(See, Plisky Advice Letter, No. A-86-149, copy enclosed.)

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

Sincerely,

Kathryn E. Donovan



By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

Enclosures

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Martha M. Norton
26 El Caminito Del Norte
Monterey, CA 93940
September 7, 1989

Margaret Ellison
Counsel, Legal Division
Fair Political Practices Division
428 J Street Suite 800
Sacramento, CA 95814

Dear Margaret:

As per our telephone conversation earlier today, I am writing to you so that I may obtain in writing the conditions and/or restrictions that might apply if I am successful as a candidate for the Monterey Peninsula Unified School District Board.

I am a retired physics teacher and have completed my five years as an early retirement consultant. My husband, Joe, a mathematics teacher of 34 years, retired in June of 1989. He is currently working for 30 days as allowed by contract in the early retirement plan of consultant as independent contractor. He is working under a contract which was accepted in the fall of 1987. The conditions of that contract are not subject to change.

My question is are there any conditions or restrictions of consequence to either my candidacy or actions as a board member which should be considered either for withdrawal from the race, or for voting legally as a board member, if elected?

Thank you for any consideration given this request.

Sincerely,



Martha M. Norton

Enclosures: Indicate activities to date.

MARTHA NORTON FOR SCHOOL BOARD
2161 Trapani Circle
Monterey, California 93940

August 28, 1989

Dear Friends:

We are writing to ask for your active support for Martha Norton as she seeks election to the Governing Board of the Monterey Peninsula Unified School District. We are delighted that Martha is running for this position, and we hope you will join us in making her campaign successful.

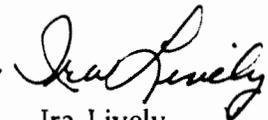
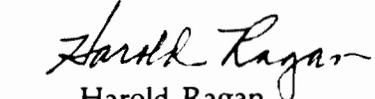
Recent state and national elections have brought public school education to the forefront as CAMPAIGN ISSUES, but the PERFORMANCE of our elected leaders AFTER the election still leaves much to be desired. We believe the same can be said of many of our locally elected school officials. It is so easy and comfortable to maintain the status quo.

Martha is eminently qualified for this job. After working as a chemist in private industry, Martha became a physics teacher in the Monterey public schools. During her teaching career, Martha worked through professional associations and with parents, students, teachers, and school administrators to bring about better learning opportunities for students. Even after retirement, she devoted much of her time, energy and talent to helping students prepare Science Fair projects. She maintains a continuing interest in public school education.

But Martha's dedication to our community does not end with education. It has been our privilege to work with Martha in a variety of community endeavors, including safe disposal of hazardous waste, bringing a recycling program to Monterey, and successful political and initiative campaigns. Whenever there is a job to be done, we have found Martha willing to do more than her part. We have found her to be extremely effective in working with others to bring about meaningful change. We know she will continue to do so as a school board member.

As such, she will bring her own special qualifications to bear on budget analysis and spending priorities and represent us and our ideas in the forum where it can do the most good--on the Monterey Peninsula Unified School District Board of Education.

Please help us help Martha by responding with your endorsement and financial contribution. Support and vote for MARTHA NORTON, who has done so much for us and our community.

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|  |  |  |  |
| Ruth Menmuir Co-Chair | Lorita Fisher Co-Chair | Ira Lively Co-Chair | Harold Ragan Treasurer |

Please make checks payable to: MARTHA NORTON for SCHOOL BOARD
2161 Trapani Circle . Monterey, CA 93940

CANDIDATE'S STATEMENT

GOVERNING BOARD MEMBER
MONTEREY PENN UNIF. TRUST. 2

Name: MARTHA NORTON
Occupation: RETIRED

Age: _____

During the past decade the Monterey Peninsula Unified School District (MPUSD) has become a much respected school district. It has received the National Library Media Program Award designating it as the outstanding School District Library Program in the United States. It has been selected as a State Model Technology site placing it in the forefront of educational institutions researching the effects of technology on learning. It has attracted superior employees at every level. However, the District is not without its problems. It faces decisions regarding the costly construction of a new high school or renovation of our existing ones, and the hiring of key top level management personnel. It faces difficulties in implementing Proposition 98 as approved by our voters, who believed their vote assured budget security with accountability and lower class size. It recognizes that many parents of middle and high school students send their children to local private schools for the advantages of lower class size as well as a more rigorous academic climate.

I feel that my professional and community service background provides me with the experience necessary to contribute to solving the issues facing the district. My professional background includes experience as a Chemical Research Librarian for Shell Development and Research Company, a Nuclear Engineer for Lockheed Aircraft-Nuclear Division and twenty-five years as a Physics teacher. My recent community service includes membership on the Monterey County Hazardous Waste Management Advisory Committee, AMBAG'S Technical Advisory Committee for the Salinas River Water Quality Project, and the City of Monterey's Curbside Recycling Committee (as a representative for the League of Women Voters). Experience on these committees has taught me the value of listening carefully to problems presented, securing all significant data available, setting realistic goals, and working cooperatively towards common objectives.

I have been a resident of this community for twenty-seven years and I have seen the benefits of being active in my community. I would like to help guide the future of public education and hope you will entrust me with your confidence.

Candidate Sign Here x


MARTHA NORTON

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BZK

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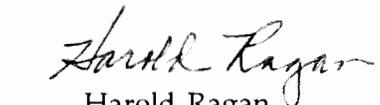
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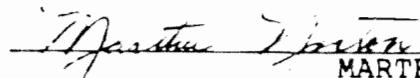
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Candidate Sign Here x


MARTHA NORTON

5-14-59
BZ



California Fair Political Practices Commission

September 13, 1989

Martha M. Norton
26 El Caminito Del Norte
Monterey, CA 93940

Re: Letter No. 89-532

Dear Ms. Norton:

Your letter requesting advice under the Political Reform Act was received on September 11, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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. Donovan
General Counsel

KED:plh