



California Fair Political Practices Commission

February 8, 1990

Dean Munro
10180 Firwood Drive
Cupertino, CA 95014

Re: Your Request for Informal Assistance
Our File No. I-89-553, Follow-Up

Dear Mr. Munro:

In response to your telephone request of January 11, 1990, we are reviewing the facts as presented in our letter to you dated November 15, 1989, and incorporating the additional facts you provided to us on October 5, 1989. This modification does not alter our conclusion.

You have advised us that your position as project director for the sports authority of the City of San Jose was scheduled to terminate as of December 31, 1989. Your leave of absence from your position as Mayor McEnery's chief of staff was also scheduled to terminate as of that date. It appears, however, that your contract with the sports authority will be extended into 1990 in light of the fact that the National Hockey League is not expected to make a decision as to which cities will be granted expansion franchises until mid-1990. These facts should be incorporated and read with our previous letter to you on the subject.

I trust that this modification correctly represents the facts related to your position with the City of San Jose. Should you have any further questions regarding this matter, do not hesitate to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh



California Fair Political Practices Commission

November 15, 1989

Dean Munro
10180 Firwood Drive
Cupertino, CA 95014

Re: Your Request for Informal Assistance
Our File No. I-89-553

Dear Mr. Munro:

This is in response to your request for advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Because your question does not involve a specific pending decision, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).² Additionally, we do not provide advice concerning laws other than the Act. Please consult with your city attorney or the Attorney General's office regarding other laws which may be applicable to your question.

QUESTION

Does your previous employment as chief of staff for the Mayor of the City of San Jose create a disqualifying conflict of interest which prohibits you from discharging your present duties as project director for the City of San Jose?

CONCLUSION

Your previous position as chief of staff for the Mayor of the City of San Jose does not create a conflict of interest which would prohibit you from discharging your duties as project director for the City of San Jose.

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. (Section 83114; Regulation 18329(c)(3).)

FACTS

For approximately seven years, you were the chief of staff for City of San Jose Mayor Tom McEnery. The City of San Jose paid your salary through the mayor's budget.

Pursuant to a stipulated permanent injunction, Mayor McEnery is prohibited from participating in or influencing certain decisions affecting the planned downtown arena project in the City of San Jose. The injunction arises out of potential conflicts of interest resulting from the mayor's interests in certain business enterprises and real property located in downtown San Jose within one mile of the planned arena. You are not a party to or directly bound by this injunction.

The City Council of the City of San Jose has formed the sports authority to promote the City of San Jose as a venue for amateur and professional athletics. You have agreed to take a position as project director to coordinate the city's activities in promoting the City of San Jose to the National Hockey League. In this capacity, you will report to the San Jose City Manager.

While you are project director for the city you will be on an indefinite leave of absence from your duties as chief of staff for the mayor. During this leave of absence, you will not receive any compensation from the mayor's budget, nor will you have any reporting responsibilities to the mayor.

You have no financial interests or source of income which would be affected by the planned downtown arena or a National Hockey League decision to place a franchise in this arena. Neither Mayor McEnery nor any entity with which he is associated is a source of income to you. Additionally, you will not receive any direction from Mayor McEnery with respect to your activities as project director.

ANALYSIS

Section 87100 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. By virtue of your position as project director for the city, you are a public official. (Sections 82048 and 87302.)

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 its effect on the public generally, on the official or a member of his immediate family,³ or on:

³ An official's "immediate family" includes his spouse and dependent children. (Section 82029.)

(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).

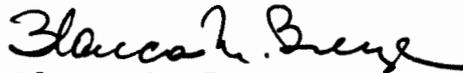
Accordingly, you may not make, participate in making, or in any way attempt to influence a governmental decision which would have a reasonably foreseeable material financial effect on a source of income of \$250 or more.

You received a salary from your employment as chief of staff for the mayor and presumably you will receive a salary as project director for the city. However, Section 82030(b)(2) excludes from the definition of "income" any salary and reimbursement for expenses or per diem received from a state, local or federal government agency. Therefore, any salary you receive or have received from your employment with the city does not constitute a disqualifying interest pursuant to Section 87103(c). Additionally, you have indicated that you have no financial interests in the project area. Accordingly, no conflict of interest arises under the Act which would prevent you from discharging your duties as project director for the city in charge of promoting the city to the National Hockey League.

Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh

Enclosure

89-553

FPPC

Oct 10 7 55 AM '89

DEAN MUNRO
10180 Firwood Drive
Cupertino, California 95014
(408) 277-5823

October 5, 1989

Katherine Donovan, Esq.
General Counsel
Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, CA 95814

Re: Request for Advice

Dear Ms. Donovan:

This letter is delivered to clarify a certain fact set forth in my request for advice dated September 21, 1989. Although I do not believe it will affect the analysis in this situation, please note that the contractual amendment under which I have assumed the role of Project Director terminates as of December 31, 1989. My leave of absence from my position as Mayor McEnery's Chief of Staff is also scheduled to terminate as of that date. It appears, however, that my contract will be extended into 1990 in light of the fact that the NHL is not expected to make a decision as to which cities will be granted expansion franchises until mid-1990.

Thank you for your prompt attention to this matter.

Very truly yours,



DEAN MUNRO

DM:BDB:se

FPPC

OCT 10 7 55 AM '89

DEAN MUNRO
10180 Firwood Drive
Cupertino, California 95014
(408) 277-5823

October 5, 1989

Katherine Donovan, Esq.
General Counsel
Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, CA 95814

Re: Request for Advice

Dear Ms. Donovan:

This letter is delivered to clarify a certain fact set forth in my request for advice dated September 21, 1989. Although I do not believe it will affect the analysis in this situation, please note that the contractual amendment under which I have assumed the role of Project Director terminates as of December 31, 1989. My leave of absence from my position as Mayor McEnery's Chief of Staff is also scheduled to terminate as of that date. It appears, however, that my contract will be extended into 1990 in light of the fact that the NHL is not expected to make a decision as to which cities will be granted expansion franchises until mid-1990.

Thank you for your prompt attention to this matter.

Very truly yours,



DEAN MUNRO

DM:BDB:se

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DEAN MUNRO
10180 Firwood Drive
Cupertino, California 95014
(408) 277-5823

September 21, 1989

Katherine Donovan, Esq.
General Counsel
Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, CA 95814

Re: Request for Advice

Dear Ms. Donovan:

This letter is to request advice regarding my ability to participate in certain governmental decisions in light of the Conflict of Interest provisions of the Political Reform Act of 1974.

Question: By virtue of my previous association as Chief of Staff for the Mayor of San Jose, am I prohibited from fulfilling my current duties as a Project Director for the Sports Advisory Committee of the City of San Jose as described below?

FACTS

Association with the Mayor of San Jose

For approximately seven years, I was the Chief of Mayor Tom McEnergy's staff and worked closely with Mayor McEnergy on a day-to-day basis. As the Mayor's Chief of Staff, I reported to Mayor McEnergy and was compensated by the City of San Jose through the Mayor's budget.

Pursuant to a Stipulated Permanent Injunction, Mayor McEnergy is prohibited from, with certain exceptions, participating in or influencing decisions affecting the planned downtown arena project in the City of San Jose. The injunction arises out of potential conflicts of interest resulting from the Mayor's interest in certain business enterprises and real property located in downtown San Jose, within a mile of the planned arena. I am not a party to or directly bound by such injunction.

Katherine Donovan, Esq.
September 21, 1989
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Project Director Position

The City Council of San Jose has formed the Sports Authority to promote San Jose as a venue for amateur and professional athletics. I have agreed to take a position as Project Director to coordinate the City's activities in promoting San Jose to the National Hockey League. In that capacity, I will report to San Jose's City Manager. While I am Project Director I will be on an indefinite leave of absence from my duties as the Mayor's Chief of Staff. During this leave of absence, I will not be receiving any compensation from the Mayor's budget, nor will I have any reporting responsibilities to the Mayor.

No Independent Conflict

I understand that pursuant to the stipulated injunction mentioned above, Mayor McEnergy will not be able to make certain governmental decisions with respect to the planned downtown arena, which decisions may become part of my responsibilities as Project Director. However, I have no independent conflict of interest; I have no financial interest or source of income which would be affected by the planned downtown arena or a National Hockey League decision to place a franchise in such arena. Neither Mayor McEnergy nor any entity with which he is associated is a source of income to me. In addition, I will not receive any direction from Mayor McEnergy with respect to my activities as Project Director.

It is my understanding that Mayor McEnergy's conflict of interest and the restrictions on his activities imposed by the above-mentioned injunction cannot be imputed to me. Thus, although the Mayor may not attempt to influence my decisions as Project Director, it is my belief that I am not prohibited by the Political Reform Act of 1974 from fulfilling my complete duties as Project Director. However, I would like you to confirm that no conflict arises merely by virtue of my prior close association with Mayor McEnergy. As I am already under contract as Project Director and have assumed those job duties, your prompt response is appreciated. If a verbal response is available first, please respond by phone prior to your delivery of a written response.

Thank you very much for your help in this matter.

Very truly yours,



DEAN MUNRO

DM:BDB:se



California Fair Political Practices Commission

September 27, 1989

Dean Munro
10180 Firwood Drive
Cupertino, CA 95014

Re: Letter No. 89-553

Dear Mr. Munro:

Your letter requesting advice under the Political Reform Act was received on September 25, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze 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