



# California Fair Political Practices Commission

November 15, 1989

John Walker  
1675 Arroyo Seco Drive  
Ventura, CA 90401

Re: Your Request for Advice  
Our File No. A-89-596

Dear Mr. Walker:

In your letter of October 9, 1989, you requested our advice concerning the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

This letter is limited to a discussion of the Act. We cannot advise you concerning other laws, such as Government Code Section 1090, which may affect your ability to participate in governmental decisions. We refer you to your school district's attorney or to the county counsel for advice regarding these other laws.

#### QUESTION

You are a member of a county board of education. May you vote on a collective bargaining agreement where that agreement would result in an increase in salary for your spouse, who is employed as a clerk by a local elementary school?

#### CONCLUSION

Under the Act, you may participate in collective bargaining decisions concerning your spouse's bargaining unit which could adversely or beneficially affect your spouse as long as these decisions affect all employees in the same job classification in the same manner.

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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.

FACTS

You are a candidate for the Board of Education in Ventura ("the Board") and your spouse is employed as a clerk at one of the elementary schools within the jurisdiction of the Board.

The Board will eventually have before it a collective bargaining agreement covering your spouse's bargaining unit. That agreement may have provisions in it which will result in a pay raise and other benefits to your spouse.

ANALYSIS

The Political Reform Act prohibits a public official, such as a school board member, from making, participating in, or using his official position to influence any 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, and therefore must disqualify himself from participating in that decision, if the decision would have a reasonably foreseeable 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 with regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to the public official within 12 months prior to the time when the decision is made." (Section 87103)

Regulation 18702.1(a)(4) further provides that a decision will be considered to have a material effect if it "will result in the personal expenses, income, assets (other than interest in real property), or liabilities of the official or his or her immediate family increasing or decreasing by at least \$250."

Regulation 18702.1(c) limits the foregoing rules:

"(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 governmental 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...."

Therefore, a decision to increase the salaries of all employees in the same classification as your spouse would not create a conflict of interest situation for you under the Act, even if it would increase your wife's income by \$250 or more. However, a decision on discipline of your wife, or a decision to increase or decrease only her salary, as opposed to all clerks in the same classification, by \$250 or more per year, would require your disqualification. (See Advice Letters to Olson, Waggoner, Hill, and Rice, Nos. A-85-242, I-86-208, I-86-336, and A-88-053, copies enclosed).

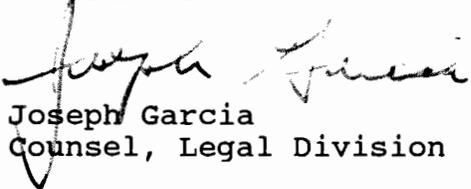
Applying these principles to your specific question, we conclude that the Act permits you to participate in collective bargaining decisions concerning your spouse's bargaining unit which could adversely or beneficially affect your spouse as long as these decisions affect all employees in the same job classification in the same manner.

This advice is limited to interpretation of the Political Reform Act. You should consult the school district's attorney or the county counsel concerning Government Code Section 1090, which prohibits public officials from making contracts in which they have a financial interest.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Joseph Garcia  
Counsel, Legal Division

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Enclosures

October 9, 1989

FPPC

John Walker  
1675 Arroyo Seco Dr.  
Ventura, CA 93004

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Legal Division  
Fair Political Practices Commission  
428 J Street Suite 800  
P.O. Box 807  
Sacramento, CA 95804

Legal Division:

As a candidate for the Board of Education in Ventura, I would appreciate your opinion on a potential conflict of interest.

Specifically, my wife is a clerk at one of the local elementary schools and is represented by the classified employees association, part of Ventura Unified Educators Association. I understand that as a board member, I would not be able to vote on any issue that would directly apply to her. However, when their contract comes due, would I be able to vote on the contract as a whole, with her being part of the bargaining unit?

Referring to a handbook supplied by the city clerk's office, entitled, "A GUIDE TO THE POLITICAL REFORM ACT OF 1974, CALIFORNIA'S CONFLICT OF INTEREST LAW FOR PUBLIC OFFICIALS", published by your organization, page 8, paragraph one states, referring to an officials economic interest, "The decision affects the officials's personal financial status, or that of his or her spouse or dependent children. This does not apply, however, to decisions which affect the official's own government salary. It applies to any decision which affects the government salary of an official's spouse only if the decision is to hire, fire, promote, demote or discipline the spouse or to set a salary for the spouse that is different from salaries paid to other employees in the same job classification or position." Since it would be a master contract covering hundreds of employees, does this represent a conflict to me?

If it does indeed, if my wife were to return any pay raise to the district that would result from any general increase in hourly wages via the new contract, would that eliminate the conflict of interest? This would be accomplished via a personal check at the end of each month that represents the difference in hourly wage, from before I took office, to the time currently under consideration. In other words, I am trying to demonstrate a lack of conflict, if we have no personal gain.

I would appreciate an opinion as soon as possible since this is becoming a potential issue with one of my opponents. I can be reached at my office at 805-372-7077, or at my home at 805-647-6686. Thank you for your help.

Sincerely yours,

*John Walker*

John Walker

P.S. She has been a district employee since 1982.



# California Fair Political Practices Commission

October 20, 1989

John Walker  
1675 Arroyo Seco Drive  
Ventura, CA 93004

Re: Letter No. 89-596

Dear Mr. Walker:

Your letter requesting advice under the Political Reform Act was received on October 12, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Joe Garcia 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