



# California Fair Political Practices Commission

December 18, 1989

Richard Jones  
City Attorney  
City of Westminster  
690 South Brea Boulevard  
Brea, CA 92621

Re: Your Request for Informal Assistance  
Our File No. I-89-611

Dear Mr. Jones:

This is in response to your letter requesting assistance as city attorney for the city of Westminster regarding the responsibilities of the city council under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> You have not provided us with the name of the councilmember whose duties are in question. Furthermore, we cannot determine from your letter whether the councilmember in question authorized an advice request on her behalf. The Act requires the Commission to provide formal written advice only to persons whose duties under the Act are in question or to that person's authorized representative. (Section 83114(b); Regulation 18329(b)(8), copy enclosed.) Consequently, we can only provide the following informal guidelines with respect to your questions.<sup>2/</sup>

## QUESTIONS

1. May a Westminster City Councilmember participate in decisions concerning the Westminster Fire Department where the councilmember is currently suing the fire fighter's association for damages in a California Superior Court for defamation and conspiracy with respect to a previous election?

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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.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

2. May the councilmember participate in decisions concerning the Westminster Fire Department if the councilmember has actually received a judgment from the fire fighter's association?

#### CONCLUSIONS

1. Under the Act a conflict of interest exists only where an official's economic interest is involved in a decision. According to the facts you have provided, there currently exists no conflict of interest with respect to city council decisions concerning the city fire department despite the pending lawsuit against the fire fighter's association. Consequently, the councilmember may participate in decisions concerning the fire department at this time.

2. If the councilmember receives a judgment against the fire fighter's association of \$250 or more, the councilmember must disqualify herself from participating in any decision that will foreseeably and materially affect the association. You have not provided sufficient information to determine whether in fact decisions concerning the fire department will have a material financial effect on the fire fighter's association.

#### FACTS

In Westminster's last general election a member of the Westminster City Council campaigned unsuccessfully for Mayor of Westminster. The election was heatedly contested and during the course of the election the fire fighter's association (the local union organization) campaigned actively against the councilmember. The councilmember responded by filing a lawsuit in a federal court against the fire fighter's association. When that cause of action was rejected, the councilmember brought a new law suit in a California Superior Court which has yet to be resolved.

Since the election, the councilmember continues to serve on the Westminster City Council. Some of the issues now coming before the city council include consideration of the following:

1. Proposed labor agreements establishing levels of compensation and other benefits for employees of the fire department.
2. The proposed purchase of equipment for the fire department.
3. The proposed budgeting for additional manpower and expense items for the fire department.

ANALYSIS

Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 defines "financial interest" 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:

(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.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

Westminster city councilmembers are public officials under the Act. (Section 82048.) Consequently, they must disqualify from any decisions which will have a foreseeable material financial effect on their financial interests. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorne (1975) 1 FPCC Ops. 198, copy enclosed.)

### The Pending Lawsuit

You stated in your letter that the councilmember's lawsuit is still in the early stages, and as such any monetary award to the councilmember from the fire fighter's association is purely speculative at this time. While the circumstances present the appearance of a conflict of interest, at this point the councilmember does not have any economic interest in decisions concerning the fire department, as specified in Section 87103.

For example, the councilmember will not be directly impacted by the decision. Decisions concerning the fire department will not result in the personal expenses, income, assets, or liabilities of the official or her immediate family increasing or decreasing by at least \$250. (Regulation 18702.1(a)(4), copy enclosed.) In addition, the councilmember has no investment interest or real property involved in the decisions. (Section 87103(a) and (b).) Further, such decisions will not affect any person who has been a source of income or gifts to the councilmember, or who has promised income or gifts to the councilmember, in the last 12 months. (Section 87103(c) and (e).) Finally, the decision will not affect a business entity with which the councilmember is a director, officer, partner, trustee, employee, or holds any position of management.<sup>3/</sup> (Section 87103(d).)

Consequently, the Act does not prohibit the councilmember from participating in decisions concerning the fire department under the current circumstances.

### After Judgment

As stated above, Section 87103 specifies that 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 the effect on the public generally, on the official or a member of his or her immediate family or on any source of income aggregating \$250 or more provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 82030 defines "income" as any payment received, unless expressly excluded from the definition in Section 82030(b). "Payment" is defined in Section 82044 as any payment, distribution, transfer, loan, advance, deposit, gift or other rendering of

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<sup>3/</sup> "Business entity" is defined in 82005 as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. Generally labor unions are not operated for profit. (Internal Revenue Code Section 501(c)(5).)

money, property, services or anything else of value, whether tangible or intangible. Because monetary judgments are not specifically excluded from the definition of "income" provided in the Act, a monetary judgment is considered income. Consequently, where the councilmember receives a judgment from the fire fighter's association of \$250 or more, she has an economic interest in the association under Section 87103. Similarly, she would have an economic interest in the association if the suit were settled and she received \$250 or more. If the decisions before the city council would foreseeably and materially affect the association, the councilmember must disqualify herself from participating in those decisions.

Whether the financial effect of a decision is material depends on the specific circumstances of each decision. For example, where the fire fighter's association is "directly involved" in a decision before the city council, Regulation 18702.1(a) provides that the effect of the decision on the source of income is deemed material and disqualification is required.<sup>4/</sup> (Combs Advice Letter, No. A-89-177, copy enclosed.) Where the decisions instead concern the fire department, it would seem that the association is not directly before the city council.

Where the fire fighter's association is not directly before the city council, but may be indirectly affected, Regulations 18702.2 and 18702.6 (copies enclosed) may apply. If the fire fighter's association is an association operated for profit and therefore a business entity (Section 82005), Regulation 18702.2 provides that the materiality of the effect of a decision depends on the financial size of the business entity. We refer you to that regulation for determination of which of its provisions, if any, apply to the fire fighter's association.

Where a source of income is not a business entity and not directly before the city council, Regulation 18702.6 provides:

The effect of a decision is material as to an individual who is a source of income or gifts to an official if any of the following applies:

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<sup>4/</sup> 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: (1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or; (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. 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.

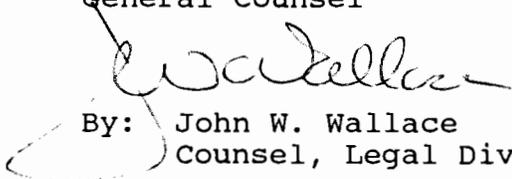
(a) The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or

(b) The decision will affect the individual's real property interest in a manner that is considered material under Section 18702.3 or Section 18702.4.

You have not provided sufficient information for us to determine whether in fact the decisions will have a material financial effect on the association once a judgment has in fact been received by the councilmember. If this contingency in fact does come about, please feel free to contact me for further assistance at (916) 322-5901 with any further questions that might arise.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

KED:JWW:plh

Enclosures

RICHARD D. JONES  
Attorney at Law

FPPC

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LESLIE R. JONES  
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THEODORE A. ANDERSON  
COSTAS A. LADIKOS

October 16, 1989

FAIR POLITICAL PRACTICES COMMISSION  
428 J Street, Suite 800  
Sacramento, CA 95814

Dear Sir or Madam:

I am City Attorney for the City of Westminster.

Please advise if a conflict of interest exists for a council member under the following circumstances:

A council member, in the last general election for the city council, ran for the position of Mayor (which is directly elected) and was defeated, she continues to serve currently as a council member.

During the election, some of the fire fighters employed by the City of Westminster actively campaigned against the election of this particular council member on behalf of the local Fire Fighters Association, which is a local union organization.

The Fire Fighter's Association mailed, at their expense, and distributed through their members, campaign materials which the council member has deemed defamatory.

The council member originally filed suit in federal court seeking damages alleging RICO violations, conspiracy and defamation.

The Federal Court has refused to hear the case and the council member is now bringing suit in California Superior Court under many of the same legal theories.

The obtaining of a judgment may have an economic impact on the Fire Fighter's Association.

The City Council has and will be asked to vote on several different items involving fire department appropriations which may have an impact on the association.

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1. Labor agreements establishing levels of compensation and other benefits for employees of the department.
2. Purchase of equipment for the fire department.
3. The budgeting of additional manpower and expense items for expenditure by the fire department.

ISSUE:

Does a conflict of interest exist such that during the pendency of the lawsuit or after obtaining a judgment that would preclude this council member from voting on any of the above-enumerated items or items of a similar content involving the Fire Department or Fire Fighter's Association?

CONCERNS:

The potential conflict arises because of the indirect impact of budgetary expenditures pertaining to the fire department, on the association.

1. Potentially, the economic strength of the association may be critical to the potential ability of the council member to recover any money on a judgment and potentially, the council member may be voting in favor of items that economically strengthen the association to enhance the council member's economic position.
2. A sufficient negative or vindictive attitude may exist between the council member and the association that rather than objectively voting for or against items involving the association, that council member is voting to harm the association.
3. Potentially, by voting against any items that will economically enhance the association, it may make it more difficult to finance the cost of litigation

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including attorney's fees making them more vulnerable  
and less able to adequately defend the  
litigation and enhance the council member's chances of  
prevailing.

Please review and advise. I am available to answer any  
questions or offer additional information.

Very Truly Yours,



RICHARD D. JONES

RDJ:kjf



# California Fair Political Practices Commission

October 26, 1989

Richard Jones  
City Attorney  
690 South Brea Boulevard  
Brea, CA 92621

Re: Letter No. 89-611

Dear Mr. Jones:

Your letter requesting advice under the Political Reform Act was received on October 23, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace 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 that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh