



FAIR POLITICAL PRACTICES COMMISSION

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November 16, 2012

Brian A. Pierik
City Attorney
Burke, Williams & Sorensen, LLP
2310 East Ponderosa Drive, Suite 25
Camarillo, CA 93010-4747

Re: Your Request for Advice
Our File No. A-12-159

Dear Mr. Pierik:

This letter responds to your request for advice on behalf of Atascadero City Councilmember Thomas O'Malley regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest.

QUESTION

Does the Act prohibit the city council from appointing Councilmember O'Malley as the city's representative to the San Luis Obispo County's Countywide Visitors and Conference Bureau (the "Bureau"), where both the city and the councilmember's business are members of the Bureau?

CONCLUSION

The Act does not prohibit a public official from serving on the board of another public or private entity. As to decisions of the Bureau's board, Councilmember O'Malley's participation in such decisions is not prohibited because the Bureau is not a government agency. For city council decisions involving the Bureau, Councilmember O'Malley's participation in such decisions is not prohibited because he does not have any economic interests in the Bureau.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

Councilmember O'Malley co-owns and operates with his wife a business called Portola that provides bed and breakfast services and event planning services. The event planning side of the business plans and manages social events and provides disposable goods and event-related equipment for individuals or organizations that pay Portola for these services. Portola has indoor and outdoor facilities for hosting events such as weddings, dinners and meetings. Portola has a city business license.

The Bureau is an unincorporated association of businesses and government entities. The purpose of the Bureau is to promote tourism in San Luis Obispo County and it is led by an executive director and operated by a small staff. The Bureau has a governing board that guides it in policy-making matters. The Bureau issues press releases about visitor and conference issues and events within San Luis Obispo County, maintains a website that features its members and issues relevant to visitors and conference-holders, and publishes a travel guide that features its members and highlights events and attractions within the County. It also maintains an office, open to visitors, in the city of San Luis Obispo.

Atascadero is a member of the Bureau and annually pays \$10,000 for its membership. In exchange for the dues, the city is permitted to appoint an individual to the Bureau's governing board. To spur tourism and economic development in the city, the city council appoints one of its members to the Bureau's board annually. The city receives no direct financial benefit from its membership in the Bureau, but, rather, receives exposure and indirect benefits through the Bureau's advertising, publications and public relations functions.

Portola is also a member of the Bureau and pays annual dues. As consideration for its dues, Portola receives mention in the Bureau's website and travel guide and referrals by Bureau personnel to visitors and persons intending to hold functions in the area. Portola receives no financial support, nor any other direct benefit, from the Bureau. Portola does have the opportunity to participate in the Bureau's operations and offers suggestions as to the Bureau's direction and goals.

ANALYSIS

Membership on the Bureau's Board

The Act does not prohibit a public official from serving on the board of another public or private entity.

Conflict of Interest

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. The Commission has adopted an eight-step standard

analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700(b).) The general rule, however, is that a conflict of interest exists whenever a public official makes a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her financial interests. As explained in step 2, below, because it does not appear that the councilmember will be making or participating in any governmental decisions as a member of the Bureau, the Act's conflict-of-interest rules are not implicated.

Step 1. Is Councilmember O'Malley a "public official" within the meaning of Section 87100?

As a city council member, Councilmember O'Malley is a public official. (Section 87200). Therefore, he may not make, participate in making, or otherwise use his official position to influence any governmental decisions that will have a reasonably foreseeable material financial effect on any of his economic interests.

Step 2. Will Councilmember O'Malley be making, participating in making or influencing a governmental decision?

A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) A public official "participates in a governmental decision" when, acting within the authority of his or her position and without significant substantive or intervening review, the official negotiates, advises, or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18702.2.) A public official is attempting to use his or her official position to influence a governmental decision if, for the purpose of influencing the decision, the official contacts or appears before or otherwise attempts to influence, any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.)

You have not indicated any governmental decisions in which Councilmember O'Malley will be participating. However, the facts suggest decisions may be made by two entities: the Bureau's board and the city council. Because the Bureau is a private, non-profit entity, and not a government agency, there is no potential conflict of interest resulting from Councilmember O'Malley's participation in such decisions.²

² For any other city council decisions that would have a reasonably foreseeable material financial effect on his business, Councilmember O'Malley would have a disqualifying conflict of interest.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

A handwritten signature in black ink, appearing to read "Valentina Joyce", with a stylized flourish at the end.

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl