

September 19, 2012

Ryan O. Hodge  
Assistant City Attorney  
City of Santa Ana  
20 Civic Center Plaza \* P O Box 1988  
Santa Ana, CA 92702

Re: Your Request for Advice  
**Our File No. A-12-126**

Dear Mr. Hodge:

This letter responds to your request for advice on behalf of Santa Ana City Councilmember Vince Sarmiento regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

### **QUESTION**

Does the Act prohibit Councilmember Sarmiento from participating in governmental decisions regarding Santa Ana Downtown Community Management District due to his status as beneficiary of a revocable trust or as a local practicing attorney?

### **CONCLUSION**

Based on the facts you provided, Councilmember Sarmiento does not have a disqualifying conflict-of-interest based on his family's trust. We do not have enough information to analyze any other economic interests.

### **FACTS**

You represent Vince Sarmiento, city council member for Santa Ana. Several years ago, Santa Ana created the Community Management District (the "CMD"), which levies certain assessments on businesses in the district. Since its inception in 2008, Councilmember Sarmiento has abstained from participating in governmental decisions regarding the CMD due to his interest in a family trust, which owns a business in the CMD.

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<sup>1</sup> 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.

Councilmember Sarmiento is a trustee and beneficiary of a revocable trust. The trust will remain revocable as long as Councilmember Sarmiento's parents are living. The trust owns a business in the CMD and pays assessments as required. He receives no income from the trust whether as a beneficiary or for performing occasional legal work.

Annually, the business pays \$3,918 in assessments due to its location in the CMD. The amount each business pays depends on a variety of factors. Each year, the CMD generates approximately \$720,000, which is collected into a non-profit, Downtown Inc. Downtown Inc. provides services to the real properties within the CMD, including cleaning, security, advertising, and special events.

Councilmember Sarmiento is also a sole practitioner with a law practice in Santa Ana. His practice is not located within the CMD.

The city council has seven members, including a directly elected mayor. The mayor and one other councilmember have recused themselves from participating in CMD decisions based on conflicts of interest.<sup>2</sup> One councilmember is facing criminal charges related to a personal employment matter and has not been attending city council meetings regularly. Under city code, the council needs a quorum of four members to vote on a matter.

### ANALYSIS

The Act's conflict-of-interest rules prohibit a public official from making, participating in making, or using his or her official position in any way to influence a governmental decision in which the official knows, or has reason to know, that he or she has a "financial interest." (Section 87100.) Section 87103 provides that a public official has a "financial interest" in a governmental 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, a member of his or her immediate family, or on any of the official's economic interests.

Under the Act, a conflict of interest exists only when a public official has a financial interest in a particular governmental decision. To determine whether a public official has a "conflict of interest" in a specific governmental decision, we employ a standard eight-step analysis outlined in Regulation 18700(b).

As a city council member that would be called upon to vote on issues regarding the CMD, Councilmember Sarmiento is a public official who would be making a governmental decision. Thus, he would meet steps one and two. The remaining steps will be analyzed below.

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<sup>2</sup> See *Winterswyk* Advice Letter, A-12-116.

**Step Three: What are Councilmember Sarmiento's Economic Interests?**

A public official has a financial interest in a decision within the meaning of Section 87103 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, a member of his or her immediate family, or on any one of five enumerated economic interests. (Section 87103; Regulations 18703-18703.5.)

The applicable economic interests include:

- An interest in a business entity in which a public official has a direct or indirect investment of \$2,000 or more. (Section 87103(a), Regulation 18703.1(a).)
- An interest in any business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d), Regulation 18703.1(b).)
- An interest in real property in which a public official has a direct or indirect interest of \$2,000 or more. (Section 87103(b), Regulation 18703.2.)
- Any source of income, including promised income, to the public official that aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c), Regulation 18703.3.)
- Any source of gifts to the public official if the gifts aggregate to \$420 or more within 12 months prior to the decision. (Section 87103(e), Regulation 18703.4.)
- A public official also has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. This is also known as the "personal financial effects" rule. (Section 87103, Regulation 18703.5.)

Based on your facts, Councilmember Sarmiento has an economic interest in the family trust as a trustee, in his law practice, and any source of income to that practice.

**The Family Trust**

Regulation 18234 defines when an official has a direct, indirect, or beneficial interest in a trust and provides the following in pertinent part:

(c) For purposes of determining whether an official has an economic interest in interests in real property, sources of income, and investments of a trust, the official has a direct, indirect, or beneficial interest in a trust if the official is:

\* \* \*

“(2) A beneficiary and:

“(A) Presently receives income; or

“(B) Has an irrevocable future right to receive income or principal. For purposes of this subsection, an individual has an irrevocable future right to receive income or principal if the trust is irrevocable, unless one of the following applies:

“(i) Powers exist to consume, invade, or appoint the principal for the benefit of beneficiaries other than the official and such powers are not limited by an ascertainable standard relating to the health, education, support, or maintenance of the beneficiaries; or

“(ii) Under the terms of the trust, someone other than the official can designate the persons who shall possess or enjoy the trust property or income.”

Because you have explained that the trust is revocable and that Councilmember Sarmiento does not receive income from the trust, under Regulation 18234, he does not have a direct, indirect or beneficial interest in the trust or assets of the trust.

### **Law Practice**

In addition, as a sole practitioner, Councilmember Sarmiento has an economic interest in his law firm as well as his clients who are sources of income. Under Section 82030(a), if a public official owns a 10 percent interest or greater in a business, clients who are sources of income to that business are also considered sources of income to the official. For any client who pays Councilmember Sarmiento \$500 or more in the 12 months prior to a decision, he has an economic interest in that client as a source of income. (Section 87103(c).)

### **Step 4: Will Councilmember Sarmiento’s economic interest be directly or indirectly involved in decisions he will make, participate in making, or influence as a public official?**

Regulation 18704.1 provides that a person, including a business entity, is directly involved in a decision before an official’s agency when that person, either directly or by an agent, either initiates the proceeding in which the decision will be made, is a named party, or is the subject of the proceeding concerning the decision before the official or the official’s agency. A person 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. (Regulation 18704.1(a)(2).)

You have not provided information regarding the councilmember’s business or its sources of income. To avoid analyzing based on hypotheticals, we do not engage in the further steps in the conflicts-of-interest analysis.

Given the information you provided, Councilmember Sarmiento does not have an economic interest in his family’s trust or assets held by the trust, but he does have an economic

interest in his law practice and the sources of income to that practice. If any of his sources of income from which he receives at least \$500 in the 12 months preceding the decision will be affected by the governmental decision, we urge you to engage in the eight-step analysis for each source of income or to contact us again for further advice.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Heather M. Rowan  
Counsel, Legal Division

HMR:jgl