

October 1, 2012

Timben Boydston  
20310 Aurora Lane  
Canyon Country, CA 91351

Re: Your Request for Advice  
**Our File No. A-12-133**

Dear Mr. Boydston:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> 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. Also, the Commission does not act as a finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 72.)

### **QUESTION**

Does the Act prevent you from participating in a decision that affects your compensation as a council member for the City of Santa Clarita?

### **CONCLUSION**

Yes. Because the decision would only affect your salary, the decision would have a disqualifying foreseeably material financial effect on your economic interest in your personal finances and you may not participate in the decision.

### **FACTS**

In 2006, you were appointed as a council member for the City of Santa Clarita in order to complete the term of another council member elected to the state legislature. You did not run for election at the expiration of the term in 2008, but in 2010 you ran and lost. In 2012, you ran again and won a seat on the City Council.

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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.

While recently completing forms related to your compensation as a council member, you learned that the City Council reduced the monthly cash amount a council member receives in lieu of obtaining medical benefits by approximately \$800.00 from the 2006 level. You also learned that the remaining four council members were exempt from this reduction because they were “grandfathered” in under the former amount. You were told that the exemption does not apply to your situation because you “permanently separated” from government employment after the expiration of your prior term as council member.

You believe the exemption should apply to you because it is your understanding that you never “permanently separated” from government employment following your prior term. You claim that according to the “pers (sic) system, (you are) considered a continuing official.” Accordingly, you have requested that this item affecting your compensation be placed on the agenda for discussion and a possible vote.

### ANALYSIS1

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. Please see the *Ehrenkanz* Advice Letter, A-10-128, for a full discussion of the eight steps as applied to a city council member (copy attached).

As a city council member that would be called upon to vote on the issue regarding your cash payments in lieu of medical benefits, you are a public official that would be making a governmental decision.<sup>2</sup> Thus, you would meet steps one and two. The remaining steps will be analyzed below.

#### **Step Three: What are your economic interests?**

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from certain enumerated economic interests of a public official. Under Section 87103 of the Act, there are six different types of economic interests that may result in a conflict of interest for a public official. Only two of those are relevant to your situation: 1) a public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);

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<sup>2</sup> Please note, if a public official has a conflict of interest in an agenda item noticed at a public meeting, then he or she must: (1) publicly identify the financial interest immediately prior to discussion of the item, as detailed in Regulation 18702.5(b); (2) recuse himself or herself from discussing, voting on, or otherwise influencing the matter; and (3) leave the room until after the discussion, vote, or conclusion of any other disposition of the matter. (Section 87105.) However, under Regulation 18702.5(d)(3), you may speak as a member of the public so long as you comply with the rules located in Regulation 18702.5(b)(1) and (b)(2). A copy of Regulation 18702.5 is enclosed.

and 2) a public official 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 known as the “personal financial effects” rule (Section 87103; Regulation 18703.5).

Your inquiry concerns cash payments to which council members are entitled in lieu of receiving medical benefits. The salary and benefits paid by the City to its employees are generally not considered “income” under Section 82030(b)(2) and Regulation 18232(a). However, material financial effects on an official's governmental salary may still be disqualifying under limited circumstances as a material and foreseeable financial effect on the official's personal finances. Thus, we continue the analysis limited to personal financial effects.

**Step Four: Is your economic interest directly or indirectly involved in the governmental decision?**

”A public official or his or her immediate family is deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family.” (Regulation 18704.5.) Here, a decision by the City Council to increase your monthly cash payments in lieu of medical benefits by \$800.00 would have a financial effect on your personal finances. Therefore, your economic interest would be directly involved in the decision.

**Steps Five and Six: Will the financial effect of the decision on your economic interest be material and reasonably foreseeable?**

Once a public official identifies his or her relevant economic interests, the official must evaluate whether it is reasonably foreseeable that the decision will have a material financial effect on any of those economic interests. A material financial effect on an economic interest is “reasonably foreseeable” if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision. (Regulation 18706(a).) An effect need not be certain to be considered “reasonably foreseeable,” but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

Regulation 18705.5(a) provides that a reasonably foreseeable financial effect on a public official's personal finances is material if it is at least \$250 in any 12-month period. While Regulation 18705.5 sets the materiality standard at \$250, Regulation 18705.5(b) provides an exception for certain governmental decisions regarding salary which, as discussed above, includes benefits:

*“The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to appoint, hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position.”*

(Regulation 18705.5(b).)

You have indicated that the four remaining council members are exempt from the \$800.00 reduction in the monthly cash payment in lieu of receiving medical benefits because they were “grandfathered” in under the former amount. The City has advised that you are not similarly exempt from the reduction because you “permanently separated” following the expiration of your previous term as a council member. The implication here is that your alleged “permanent separation” has created a job classification for you that is different from the other four council members who did not permanently separate from government employment, and that you are not thus entitled to the same exemption that they enjoy. If that is the case<sup>3</sup>, then a decision to provide you with an exemption from specified reduction would set a salary for you that is different from salaries paid to other council members with the same job classification who are not entitled to the reduction. Accordingly, you would have a conflict of interest in participating in the decision because your salary would be the only salary affected by the decision.

**Steps Seven and Eight: The public generally and legally required participation exceptions.**

An official who otherwise has a conflict of interest in a decision may still participate under the “public generally” exception. This exception applies when the financial effect of a decision on a public official's economic interests is substantially the same as the effect on a significant segment of the public. The “legally required participation” rule applies when the official's participation in a governmental decision is legally required. (Section 87101; Regulation 18708.)

Nothing you have provided indicates any facts pertinent to the analysis of these exceptions so we provide no analysis concerning their applicability to your situation.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Jack Woodside  
Senior Counsel, Legal Division

JCW:jgl

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<sup>3</sup> As mentioned, the Commission does not act as a finder of fact in providing advice (*In re Oglesby* (1975) 1 FPPC Ops. 72), so we are unable to determine whether you actually “permanently separated” from government employment following the expiration of your last term, and whether you are entitled to the same exemption enjoyed by the four other council members.