

November 28, 2012

Phaedra A. Norton
Turlock City Attorney
156 S. Broadway, Suite 240
Turlock, CA 95380-5456

Re: Your Request for Advice
Our File No. A-12-168

Dear Ms. Norton:

This letter is in response to your request for advice on behalf of Steven Nascimento regarding his duties as a newly-elected Turlock City Councilmember under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

Please note that the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (In re Oglesby (1975) 1 FPPC Ops. 71.) Moreover, 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 or Government Code Section 1090.

QUESTION

May Councilmember-elect Nascimento participate in decisions affecting the Turlock Firefighters Association Local #2434 (the "Association") and the terms and conditions of employment for its firefighter members, including his brother?

CONCLUSION

The councilmember elect does not have an economic interest in these decisions or in his brother for purposes of the conflict-of-interest provisions of the Act.

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

Steven Nascimento was recently elected to the Turlock city council. As a councilmember, Mr. Nascimento will be called upon to make decisions affecting the city's agreement with the Association. These decisions will relate to salary and benefits of firefighters, as well as other decisions that affect fire employment conditions. The councilmember-elect's brother is a firefighter employed with the city of Turlock and a member of the Association.

However, Mr. Nascimento advises that:

- (1) His brother is not a source of income to him.
- (2) He does not have an interest in any business entity with his brother.

ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Specifically, Section 87100 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 a standard eight-step analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1)-(8).)

Your facts indicate that Councilmember Nascimento is a public official who intends to make, participate in making, or influence a governmental decision (steps 1 and 2 in the 8-step analysis).

The next step is to determine that the official has an economic interest that may be affected by the decision. As defined in Section 87103 of the Act, a public official's economic interests do not include an adult sibling absent some other economic link to the councilmember's brother. For example, if his brother were a source of income or partner in a business venture, these could constitute economic interests under Section 87103, irrespective of the individual's familial relationship.

You have indicated, however, that Councilmember-elect Nascimento's brother is not a source of income to him, nor do they have any shared business interests. Therefore, the councilmember would not have an economic interest in the decision in question and we do not need to consider the remaining five steps.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

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