

November 14, 2013

Claudia Quintana
Vallejo City Attorney
555 Santa Clara Street
Vallejo, CA 94590

**RE: Your Request for Advice
Our File No. A-12-013a**

Dear Ms. Quintana:

This letter responds to your request for clarification of advice provided to your office on behalf of Vallejo Councilmember Stephanie Gomes (*Nagel* Advice Letter, No. A-12-013) regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”)¹

Please note, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. Moreover, the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Finally, this letter is based solely on the provisions of the Act. The Commission has no jurisdiction to advise on Section 1090 until Assembly Bill 1090 becomes effective on January 1, 2014.

You have asked us if the following additional facts change the conclusion in *Nagel* or cause us to reconsider the *Nagel* advice. We consider each set of new facts individually.

1. Some retired police captains, while employed with the City, were represented by CAMP; some retired and some current police captains were and are represented by VPOA; and some

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.

retired police captains were exempt,² but they all receive their retirement benefits from a “blended” CalPERS Account which is funded by current Employee and City contributions and for which CalPERS sets the required City Contribution level on an annual basis completely independent from any City action.

Adding these facts to those in Nagel does not effect the conclusions in that formal written advice. The purpose behind the exception in Regulation 18705.5(b) is to prohibit public officials from participating in decisions that would uniquely affect the governmental income of the official or the official’s spouse (akin to hiring or firing the individual), but to allow the official to participate in decisions that affected a class that included the official’s spouse.

Even assuming there were ultimately a different impact on retired police captains represented by the two different unions, as well as those exempt, and the difference was more than \$250 in a 12 month period, the councilmember’s spouse would still not be uniquely affected since there are at least two other retired police captains represented by CAMP who would be effected in the same manner as the councilmember’s spouse. We would conclude that those retired police captains represented by CAMP establish a class of which the official’s spouse is a member. Additionally, we would conclude that a class of retired police captains represented by one union is different than a class of active and retired police captains represented by a different union.

2. and 3. The City has publicly stated that it has a \$5.2 million dollar deficit. It is assumed that the amount of concessions obtained from one labor group may affect the amount of concessions sought from another labor group. Additionally, all negotiations for each bargaining group are conducted separately from each other, but all negotiations with all of the groups are currently ongoing.

These additional facts do not appear to have any bearing on the analysis under Regulation 18705.5(b).

Thus, we confirm the formal advice in the *Nagel* advice letter.

² A total of eleven individuals are either retirees or actively employed in the job classification of police captain, the position held by Vice Mayor Gomes’ spouse Tony Pearsall when he retired in 2003. Mr. Pearsall and two others retired as police captains while being represented by CAMP. Four retired as police captains while the job classification was being represented by VPOA, and two police captains are active employees represented by VPOA. Two police captains retired at a time when the job classification was regarded as exempt and not within any bargaining unit.

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