

April 29, 2013

W. Michael McCormick
Vernon City Council
4305 Santa Fe Avenue
Vernon, CA 90058

Re: Your Request for Advice
Our File No. A-13-050

Dear Mr. McCormick:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”)¹ and is based on the facts presented. 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.) 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.

QUESTION

Does the Act prohibit you, a council member of the City of Vernon (the “City”), from participating in a decision to set the monthly salary of all council members at the reduced amount of \$2,083, effective immediately, if all council members, other than you and one other council member, are already paid salaries in that amount?

CONCLUSION

No. The financial effects of a decision that affects only your salary are not considered to be material unless the salary is different from salaries paid to the other council members.²

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.

² You have specifically asked whether, under Regulation 18702.4(a)(3), you would be allowed to participate and vote in this decision. Because we have found you do not have a disqualifying conflict of interest under Section 82030(b)(2) and Regulation 18232, we do not address this question.

FACTS

You are one of five council members of the City. As of May, 2011, each council member received a monthly salary of \$4,650. As a part of Good Governance Reform efforts, on May 26, 2011 the city council adopted Resolution No. 2011-87, which reduced council members' monthly salaries to \$2,083 effective upon the completion of each member's current term. Because of staggered terms, council members' salaries would be reduced on different dates in the future. To date, two council members' salaries have been automatically reduced pursuant to the resolution. In addition, one council member voluntarily decreased her monthly salary to \$2,083 when she took office in October 2012. Only two council members, you and Councilmember Maisano, still receive the higher monthly salary of \$4,650. Your term ends in April, 2015 and Councilmember Maisano's term ends in April 2016.

As part of ongoing reform efforts, Independent Reform Monitor John Van De Kamp has repeatedly recommended that, instead of phasing in the salary reduction, all council members' monthly salaries should be immediately set at \$2,083.00 per month. The city council will be voting on whether to implement this recommendation.

ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will "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).) 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 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 economic interests.

Steps 1 and 2. Are you a public official" within the meaning of Section 87100 and will you be making, participating in making or influencing a governmental decision?

Under Section 87200, you, as a city council member, are a public official. When voting on whether to set all council members' monthly salaries at the new lower level, effective immediately, you would be making and participating in making a governmental decision (Regulation 18702.3).

Step 3. What are your economic interests?

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from certain enumerated economic interests. These economic interests are described in Section 87103 and Regulations 18703-18703.5. Only two economic interests are implicated by your facts:

- A source of income to the official, including promised income, totaling \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- The personal expenses, income, assets, or liabilities of the official, as well as those of his or her immediate family. This is commonly referred to as the “personal financial effects” rule. (Section 87103; Regulation 18703.5.)

Your inquiry concerns salary payments to city council members. Salaries 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 our analysis limited to personal financial effects.

Step 4. Is your economic interest directly or indirectly involved in the governmental decision?

In order to determine if a governmental decision’s reasonably foreseeable financial effect on a given economic interest is material, it must first be determined whether the official’s economic interest is directly or indirectly involved in the governmental decision. (Regulation 18704.)

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 set a salary of \$2,083 per month for all council members, effective immediately, would have the financial effect of reducing your personal income. Therefore, your economic interest would be directly involved in the decision.

Steps 5 & 6: 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 reThorner* (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 salaries:

“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).) (Emphasis added.)

You have indicated that three of the five council members already receive a monthly salary of \$2,083 and, therefore, the decision to set this amount as the salary for all council members would affect only you and Councilmember Maisano. We have previously advised that a decision to set the salary of a public official does not give rise to a conflict of interest unless the decision has a unique personal effect on the official or his or her spouse. (*Calonne* Advice Letter, No. I-11-172; *Riddell* Advice Letter, No. I-08-195; *Lorenzen* Advice Letter, No. A-07-172; *Dixon* Advice Letter, No. I-02-172.) The subject decision does not have a unique personal effect on you because it applies equally to Councilmember Maisano and results in the same monthly salary being paid to all council members. Accordingly, you do not have a disqualifying conflict of interest with respect to the decision

Steps 7 & 8: The public generally and legally required participation exceptions.

Because we have found that you do not have a disqualifying conflict of interest in the subject decision, we need not reach the question of whether either of these exceptions applies.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl