

June 12, 2014

William B. Conners
Town of Atherton, City Attorney
91 Ashfield Road
Atherton, CA 94207

Re: Your Request for Advice
Our File No. A-14-091

Dear Mr. Conners:

This letter responds to your request for advice on behalf of town council members of the Town of Atherton regarding restrictions that may apply to the members if they solicit funds for a nonprofit organization. Please note that we only provide advice under the Political Reform Act (the "Act").¹ We do not provide advice on other conflict of interest restrictions, if any, that could arise such as those governed by the common law. We are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), meaning that any advice we provide assumes the facts the requester provides to us are accurate. If this is not the case, then our advice could be different.

QUESTIONS

1. Does the Act prohibit a council member from serving as a board member of a nonprofit organization that raises funds for the Town to build a new city hall?
2. Does the Act prohibit a council member from actively soliciting donations, either through the nonprofit or otherwise, for the direct benefit of the city hall project and the solicitation is expressly not for any campaign or personal benefit?

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.

3. Does the Act prohibit a council member from participating in a decision to approve a project if the council member solicited donations from the applicant within twelve months prior to the decision?

CONCLUSIONS

1 & 2 - No. The Act does not prohibit officials from working or doing volunteer work, including soliciting donations, for private entities. However, as explained below, the Act's "behested payment" provisions may require the council members to file reports providing information on the donations they solicit.

3 – No. The council members do not have a financial interest in the decision and are therefore not prohibited from participating in the decision.

FACTS

The Town of Atherton is interested in building a new city hall but does not have sufficient funds to do so. The town wants to solicit funds from its citizens to achieve this goal. There is a 501(c)(3) nonprofit organization that has been formed to raise funds and donate them to the town for this purpose. Several council members are interested in serving on the nonprofit's board of directors and/or soliciting donations for the nonprofit.

ANALYSIS

CONFLICT OF INTEREST

Political Reform Act

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 Act's conflict-of-interest provisions do not prohibit public officials from working or doing volunteer work for private entities. Therefore, it is permissible under the Act for council members to simultaneously serve on the town council and serve on the nonprofit's board of directors.

The Act's conflict-of-interest provisions do prohibit public officials from making, participating in making, or using their official positions to influence governmental decisions that will financially affect their own financial interests. (Sections 87100, 87103.) Under Section 87103, an official has a financial interest for purposes of this rule if the government decision in

which he or she participates materially affects any of the following interests (Regulations 18703 – 18703.5, inclusive.)

- A business entity in which he or she has a direct or indirect investment of \$ 2,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d); Regulation 18703.1(b).)
- Real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)
- Any source of income, including promised income, totaling \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- Any source of gifts to him or her if the gifts total \$440 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)
- His or her personal expenses, income, assets, or liabilities, 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.)

The only financial interest implicated by the facts is source of income. You have indicated, however that the council members will not receive any compensation for their work for the nonprofit or otherwise derive personal income from the donations they solicit to the nonprofit. Therefore, neither the nonprofit nor donors to it are a “financial interest” under the Act for the council members who serve on its board and these council members would not have a conflict of interest under the Act if they engage in town council decisions financially affecting the nonprofit or those donors.²

Elected Officers - Behested Payment Reports

Your facts indicate that the nonprofit will solicit donations to help accomplish its purpose of providing funds to the city to build a new city hall. While the Act does not regulate charitable fundraising, it does regulate certain conduct by elected officers, such as the council members, relating to charitable fundraising.

Section 82015(b)(2)(B)(iii) of the Act states that if an individual or entity, at the behest of an elected officer, makes monetary or in-kind donations totaling \$5,000 or more in a calendar year for a legislative, governmental or charitable purpose, that officer has to file a report detailing those donations with his or her public agency within 30 days after reaching the \$5,000

² This assumes that a donor is not a source of income to a council member in some other capacity not related to his or her donations to the nonprofit.

threshold and each 30 days thereafter for additional donations by the same donor. The report is filed on FPPC Form 803, entitled "Behested Payment Report."³

Therefore, if any of the council members solicit or otherwise seek donations to the nonprofit, they will be required to file this report if donations from an individual donor reaches \$5,000 or more in a calendar year.⁴

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

³ The Form 803 can be obtained on the FPPC web site at: <http://www.fppc.ca.gov/forms/803/Form803.pdf>.

⁴ Regulation 18215.3 defines the term "at the behest" for purposes of this requirement (Regulation 18215.3(a)) and specifies exceptions to this requirement (see Regulation 18215.3(b) and (c)).