

December 1, 2014

Aaron C. Harp, City Attorney
City of Newport Beach
100 Civic Center
NewPort Beach, CA 92660

Re: Your Request for Advice
Our File No. A-14-204

Dear Mr. Harp:

This letter responds to your request for advice on behalf of Councilmember-elect Kevin Muldoon regarding his duties under the conflict of interest provisions of the Political Reform Act (the "Act").¹ Because 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), this advice is based solely on the facts presented.

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090, or more specific provisions such as State Bar Rules.

QUESTION

May Councilmember-elect Muldoon participate in governmental decisions related to residential piers located upon public tidelands in Newport Harbor despite having previously served as co-counsel to a nonprofit that defended the private property rights of homeowners that own residential piers in Newport Harbor?

CONCLUSION

Since Councilmember-elect Muldoon does not have a potentially disqualifying interest in the decision as contemplated by Section 87103, he does not have a conflict of interest.

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

Councilmember-elect Muldoon was elected to the Newport Beach City Council at the November 4, 2014 General Election and is scheduled to be sworn into office on December 9, 2014. In his private capacity, Councilmember-elect Muldoon is a practicing attorney licensed in the State of California.

Over 12 months ago, Councilmember-elect Muldoon served as co-counsel to the Claremont Institute for Constitutional Jurisprudence (the "Institute"). The Institute is a 501(c)(3) organization that relies on the support of individual donors to fulfill its mission. In his capacity as co-counsel to the Institute, Councilmember-elect Muldoon advised the Institute related to the private property rights of homeowners that own residential piers in Newport Harbor.

For purposes of this request, you ask us to assume that Councilmember-elect Muldoon received more than \$500 from the Claremont Institute for his legal services and that some or all of the money used to pay Councilmember-elect Muldoon's legal fees was donated to the Institute by residents of the City who live adjacent to Newport Harbor.

ANALYSIS

Section 87100 prohibits public officials from making, participating in making, or using their official positions to influence governmental decisions in which they know or have reason to know they have a financial interest. A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, or on a member of the official's immediate family, or on specific enumerated interests, including any source of income (other than gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status), aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)

According to your facts, the only sources of income in question are the Institute and potentially residents of the City who live adjacent to Newport Harbor who donated to the institute. However, all of this income was received more than 12 months prior to the councilmember-elect taking office. Therefore, the sources would not be considered sources of income to the councilmember-elect as contemplated by Section 87103 for conflict of interest purposes.

Absent any other interests in the decisions related to residential piers located upon public tidelands in Newport Harbor (as set forth in Section 87103), the councilmember-elect will not have a conflict of interest.

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

JWW:jgl