



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 8, 2015

Joseph M. Montes
City Attorney, City of Santa Clarita
Burke, Williams & Sorenson, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

Re: Your Request for Advice
Our File No. A-15-082

Dear Mr. Montes:

This letter responds to your request for advice on behalf of Santa Clarita Councilmember Timben Boydston regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

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.

QUESTIONS

The City and the College of the Canyons are renegotiating a Memorandum of Understanding (MOU) which allows certain groups to use the College’s Performing Arts Center at a discounted rate. You have asked the following:

1. Does Councilmember Boydston have a conflict of interest that would prohibit his participation in the City Council’s renegotiation of a MOU where he is the Executive Director of a nonprofit group that is eligible for the discount?
2. If Councilmember Boydston has a conflict of interest, can he nevertheless participate in renegotiation of the MOU pursuant to Regulation 18704.4?

CONCLUSIONS

1. Yes. Councilmember Boydston may not make, participate in making, or influence the City Council’s decision concerning the MOU.

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. No. The exceptions would not apply to the councilmember's participation in the City's renegotiations of the MOU under Regulation 18704.4.

FACTS

The College of the Canyons is located in the City of Santa Clarita. The College of the Canyons has a Performing Arts Center on its campus. For many years the City and the College have had a MOU pursuant to which certain groups within the City have been afforded use of the Center as a performance space at a discounted rate. In exchange, the City pays a flat annual subsidy of \$75,000 to the College. Under the terms of the MOU, City staff identifies the groups eligible for the discount based upon criteria set forth in the MOU. Once a group is identified as eligible, they are able to book performance dates at the Center at discounted rates.

There are presently four such groups who use the Center at the discounted rate (although the MOU does not limit the number of groups that can get the discount), including the Canyon Theatre Guild. The Guild is a nonprofit theater company that puts on several productions per season, some of which are at the Center, and some of which occur at other venues. Councilmember Boydston serves as the Executive Director of the Guild, and receives a salary. You noted in your correspondence of April 30, 2015, that the Guild is governed by a Board of Directors and it was your understanding that the organization has other staff that could also work with the City and the College on the MOU.

The current MOU is being renegotiated and will be presented for City Council consideration shortly. As part of the present negotiations, some of the terms of the existing MOU may be changed. Such changes could include a requirement that all ticket sales run through the Center box office. This could impact the Guild since it might otherwise sell season tickets for all performances regardless of the venue for each performance. By requiring that tickets be sold only through the box office, the MOU could make sales of season passes, or separate performance tickets more difficult for the Guild whose patrons are used to buying season tickets that include all performances, regardless of venue.

Another possible change to the MOU would be a ticket surcharge of one to three dollars per ticket—which again, could impact ticket sales. Alternatively, if the surcharge is not charged, there is a possibility that the rental rate may be increased.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. Under Section 87103(c), a public official has a financial interest in any source of income of \$500 or more.

Foreseeability and Materiality: Regulation 18701(a) provides:

“A financial effect . . . is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest . . .”

With respect to materiality, as relevant to your facts, the financial effect on a nonprofit (such as the Guild) is material if it is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject the proceeding. You noted that:

1. There were only four groups eligible for the MOU discount, including the Guild.
2. As part of the present negotiations, a new requirement that all ticket sales run through the Center box office may be added. You stated that this could impact the Guild since it might otherwise sell season tickets for all performances regardless of the venue for each performance. By requiring that tickets be sold only through the box office, the MOU could make sales of season passes, or separate performance tickets more difficult for the Guild whose patrons are used to buying season tickets that include all performances, regardless of venue.
3. In addition, a ticket surcharge of one to three dollars per ticket may be added which again, could impact ticket sales. Alternatively, if the surcharge is not charged, there is a possibility that the rental rate may be increased.

Because these decisions currently apply to the Guild and three other entities, it appears the Guild is the the subject of the governmental decision and identified in connection with the decision. Therefore, the councilmember would have a conflict of interest in the decision to renegotiate the MOU.²

Making, Participate in Making, or Influencing: A public official with a conflict of interest is prohibited from making, participate in making, or influencing the governmental decision. An official “makes a governmental decision” when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18704.1.) A public official “participates in a governmental decision” when, acting within the authority of his or her position and without significant intervening substantive review, the official negotiates, advises, or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18704.2.) For a decision before the official’s own agency, a public official is attempting to use his

² We note that some of the decisions have more obvious financial impacts on the Guild than others. However, all these decisions are inextricably linked interrelated to the decision to increase the rental rate and therefore all would be considered disqualifying.

or her official position to influence a decision if, for the purpose of influencing, the official contacts or appears before any member, officer, employee, or consultant of the agency. (Regulation 18704.3.)

Moreover, if a public official's office is listed in Section 87200 ("87200 filers" include members of a city council) and he or she has a conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, verbally identify each type of interest involved in the decision as well as details of the interest, on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item. (Section 87105.)

You also asked if Councilmember Boydston, despite having a conflict of interest, could nevertheless participate as the Executive Director of Guild pursuant to the exceptions in Regulation 18704.4. Regulation 18704.4(a)(2) and (b)(1) provide that despite a conflict of interest, an official may still appear in the same manner as any other member of the general public before his or her own agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:

“(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

“(B) A business entity wholly owned by the official or members of his or her immediate family.

“(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.”

Generally, these definitions have one thing in common, that the official is essentially the only person that can appear on behalf of his wholly owned property, wholly owned business, or business in which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control. While nonprofits are not specifically addressed, the exception would appear to apply to a nonprofit entity under the same circumstances as set forth for business entities. In other words, the exception would apply if the official exercises sole direction and control over the Guild.

You noted in your correspondence of April 30, 2015, that the Guild is governed by a Board of Directors and it was your understanding that the organization has other staff that could likely speak on behalf in the negotiations. Consequently, the exception would not apply to the councilmember's participation in negotiations with the City on behalf of the Guild.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl