



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

June 15, 2015

Minh C. Tran
County Counsel
Napa County
1195 Third Street, Suite 301
Napa, CA 94559

Re: Your Request for Advice
Our File No. A-15-106

Dear Ms. Tran:

This letter responds to your request for advice on behalf of Napa County Supervisor Mark Luce regarding his duties under 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.

QUESTION

As a Napa County Supervisor and, in his private capacity, an unpaid Executive Director of New Dawn Communities ("NDC") and an officer of World Christian Outreach ("WCO") may Supervisor Luce make, participate in making, or influence a decision regarding a person who has made a donation to either NDC or WCO?

CONCLUSION

Supervisor Luce would not have a potentially disqualifying interest in donors to NDC or WCO as contemplated by Sections 87100 and 87103 . However, the supervisor may have behested payment reporting requirements as discussed below.

FACTS

Mark Luce was elected to the Napa County Board of Supervisors in 1996. He is also the Executive Director of New Dawn Communities, a ministry of World Christian Outreach. WCO is a 501(c)(3), nonprofit corporation. Mr. Luce also serves as an officer of WCO. He does not receive compensation and does not have any ownership interest or investments in the organizations.

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.

On occasion, a third party (person or entity) who has made a charitable donation to the NDC or WCO may have business before the Napa County Board of Supervisors. You ask if Supervisor Luce will have conflict of interest in decisions affecting these donors.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a decision within the meaning of the Act if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s interests as specified in Section 87103.

- A business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- Real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- A source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- A source of gifts to him or her if the gifts aggregate to \$460 or more within 12 months prior to the decision. (Section 87103(e).)
- His or her personal finances, including those of the official’s immediate family -- this is the “personal financial effects” rule. (Section 87103.)

While in the past we have pierced through a nonprofit organization to attribute income received by the official from the nonprofit to the members of the governing board,² under your facts the Supervisor receives no income from the NDC or WCO.³

Additionally, where persons donate money to NDC or WCO at the supervisor’s behest, the donations will not be gifts to him provided he receives no compensation and does not otherwise

² For example, in the *Whittlesey* Advice Letter, No. A-97-552, a planning commissioner’s spouse worked for a nonprofit organization. One of the directors of the nonprofit organization had participated with another person in the decision to hire the planning commissioner’s spouse. In that situation, we pierced through the organization and concluded that the director was a source of income to the planning commissioner. On the other hand, in the *Abt* Advice Letter, No. A-91-361, we reached a different result. In that letter, an airport commissioner was a salaried president of a nonprofit organization. The entire 30-member governing board of the nonprofit organization determined his salary. Under those facts, we advised that none of the directors was a source of income to the commissioner because no single director controlled the employment relationship between the nonprofit organization and the airport commissioner.

³ With respect to third-party donors to NDC and WCO, we assume that the supervisor has no independent interest in these persons (e.g., has not received income or gifts from them, and is not employed with them).

derive personal income or benefit from the donations. (*Connor* Advice Letter, No. A-14-091) Thus, the supervisor would not have a conflict of interest in cases where the donors appear before the board of supervisors.

However, Section 82015(b)(2)(B)(iii) provides (in pertinent part) that payments solicited by elected officials for charitable purposes must be reported within 30 days if \$5,000 or more (in the aggregate from the same source) in the same calendar year. The purpose of the “behested payment” reporting requirements is to capture reporting for payments that are not direct contributions or gifts to elected officials, but payments in which the public would have an interest, given the officials’ role in the exchange. (*Peak* Advice Letter, No. A-12-094.)

Regulation 18215.3 provides a limited exception to the behested payment reporting requirements for payments made in response to a nonprofit organization’s fundraising letter in cases where an elected officer’s name is present on the solicitation. The exception provides that where the payment is made in response to a fundraising solicitation from a charitable organization, the payment is not made at the behest of an elected officer so long as the solicitation does not “feature” the elected officer. (Regulation 18215.3(b).) A solicitation “features” an elected officer when it “includes the elected officer’s photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color,” or when the “roster or letterhead listing the governing body contains a majority of elected officers.” (Regulation 18215.3(b).)

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