



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 15, 2015

Kenneth Dauber
730 Paul Avenue
Palo Alto, CA 94306

Re: Your Request for Advice
Our File No. A-15-151

Dear Mr. Dauber:

This letter responds to your request for advice 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. Additionally, you may wish to consult with your school district's statement of incompatible activities, if any.

QUESTION

As a member of the Palo Alto Unified School District Board, does the Act prohibit you from participating in decisions relating to how the Board will respond to civil rights complaints involving the federal Department of Education's Office for Civil Rights?

CONCLUSION

No. The Act seeks to prevent financial conflicts of interests in decision making. The Office for Civil Rights has not been a source of income to you since 2011, and further, income from a state, local or federal governmental agency is not included within the Act's definition of income. Your facts do not show other financial interests in the decisions you describe that are coming before the Board and therefore the Act does not restrict your participation in these decisions.

FACTS

You are a member of the Governing Board of the Palo Alto Unified School District. Over the past several years, the School District has been investigated by the United States Department of Education Office for Civil Rights ("OCR") in response to parent complaints. One complaint resulted in a finding that the School District had violated federal civil rights laws. Other complaints

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.

are pending and under investigation. In June, 2014, the Board adopted a resolution criticizing OCR's investigation procedures. You criticized this resolution during your campaign for school board member and you were elected in 2014.

Prior to your election, over the past 15 years, you have been a paid and at times unpaid consultant to organizations that were headed by future heads of OCR. From 2009-2011, you served as an occasional paid consultant to OCR for national Civil Rights Data Collection, and received \$26,426, but have not received income from OCR since 2011. You have communicated with OCR regarding their investigations in general and provided the information you received to the public, the Board, and the press. You also coordinated a public workshop for OCR to present information regarding civil rights in education. Your wife, a Stanford professor, has publically expressed her concerns about the School District's processes and policies regarding its bullying and complaint procedures.

You have also been vocal in your criticism of the Board both before and during your campaign for Board member. Some individuals who have complained to OCR about the School District also contributed to your campaign. You continue to advocate for a better relationship between OCR and the Board.

The Board occasionally makes decisions regarding matters pending before OCR. As a Board member, you will be called upon to participate in these decisions. Specifically, the Board will soon vote on the direction to give the Superintendent regarding whether the School District should attempt to reach resolution agreements with OCR in two pending matters. The Board may also discuss how to respond to any findings or proposed agreements.

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.² Under Section 87103(c), a public official has a financial interest in any source of income of \$500 or more provided, promised to, or received by the public official within 12 months prior to the decision. In addition, the Act's definition of income does not include salary and reimbursement for expenses or per diem received from a state, local, or federal government agency. (Section 82030(b)(2).)

You received payment for acting as an occasional paid consultant for OCR during 2009-2011 of \$26,426, including \$5,872 in 2011. However, OCR has not been a source of income to you since 2011, and further, income from a state, local or federal governmental agency is not included within the Act's definition of income in Section 82030.

You also stated that you have received campaign contributions from individuals who have complained about the school district to OCR and question whether that would create a conflict of interest for you. Campaign contributions generally do not give rise to a conflict of interest for elected officials under the Act, except in certain narrow situations where an official is a member of

² The Act only governs financial interests. Your concerns regarding your opinions you have expressed may be addressed by other areas of law such as the Board's Statement of Incompatible Activities.

an appointed board or commission and is also running for office and receiving campaign contributions. (Section 84308.) On numerous occasions, we have advised that the receipt of campaign contributions does not give rise to a conflict of interest because the Act expressly exempts campaign contributions from the definitions of “income” and “gift.” (§§ 82028, 82030; See *Gwinn* Advice Letter, No. I-03-217; *Rudnansky* Advice Letter, No. A-03-113; *Larocque* Advice Letter, No. I-99-161; *Stafford* Advice Letter, No. A-97-177.) Section 82030(b)(1) states that the definition of income does not include campaign contributions required to be reported on campaign statements under Chapter 4 of the Act.

Your facts describe income you have received in the past, but none within the 12 months prior to the decision. None of the other requests for information or interactions with OCR that you described constitute a financial interest under the Act that may create a conflict of interest. As such, the Act does not prohibit your participating in the Palo Alto Unified School District Board decisions you described involving OCR.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl