



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

September 30, 2020

Jonathan P. Hobbs
City Attorney
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

Re: Your Request for Advice
Our File No. A-20-105

Dear Mr. Hobbs:

This letter responds to your request for advice on behalf of City of Elk Grove Councilmembers Patrick Hume and Darren Suen 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.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

1. Does Councilmember Hume have a conflict of interest, precluding his participation in considering and voting on the pending California Northstate University (“CNU”) hospital project in light of Councilmember Hume’s spouse’s employment with Sutter Health (“Sutter”) in Sacramento?

2. Does Councilmember Suen have a conflict of interest, precluding his participation in considering and voting on the CNU hospital project in light of his spouse’s employment with St. Joseph’s Medical Center in Stockton California, which is a member facility of Dignity Health (“Dignity”)?

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.

CONCLUSIONS

1. Yes. As explained bellow, the decision would present a reasonably foreseeable, material financial effect on Sutter, in which Councilmember Hume has a source of income interest.

2. Yes. As explained bellow, the decision would present a reasonably foreseeable, material financial effect on Dignity, in which Councilmember Suen has a source of income interest.

FACTS AS PRESENTED BY REQUESTER

The CNU Project

CNU has a pending land use application for entitlements for the development of a medical center and campus, including a teaching hospital, at West Taron Drive in the City of Elk Grove. The land use entitlements sought for the CNU hospital project would require City Council approval. The proposed approvals are expected to be presented to the City Council sometime in 2021. If the application is approved, the construction commencement date and opening of the new CNU facility are unknown, although CNU has indicated that it wants to start construction as soon as possible.

Councilmember Hume

Councilmember Hume's spouse, Lisa Hume, is employed by Sutter as the Director of Healthcare Philanthropy, South Valley. She works out of Sutter's Memorial Hospital in Modesto, California. Sutter is a nonprofit organization. Mrs. Hume is a salaried employee of Sutter. Sutter has an existing medical plaza with medical offices in Elk Grove. Sutter does not have a hospital facility in Elk Grove. Mrs. Hume does not work out of Sutter's Elk Grove offices. Sutter has made no indication to Mrs. Hume that the proposed CNU hospital project, if approved, would have any impact on Mrs. Hume's employment or income with Sutter.

Councilmember Suen

Councilmember Suen's spouse, Denise Suen, is employed in a Laboratory Marketing position at Dignity's St. Joseph's Medical Center on California Street in Stockton, California. Dignity is a nonprofit organization. Mrs. Suen is a salaried employee of Dignity. Dignity has an approved project in the City of Elk Grove for a new hospital to be built at Waymark Road and Elk Grove Boulevard, but construction of the hospital has not yet commenced. Dignity has indicated that construction may commence in 2023, and that the facility could be open sometime in 2026 or 2027. Mrs. Suen would not work at the newly proposed Dignity hospital, and she would have no direct affiliation with the new Dignity hospital in Elk Grove. Dignity has made no indication to Mrs. Suen that the proposed CNU facility, if approved, would have any impact on Mrs. Suen's employment or income.

ANALYSIS

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in

which he knows or has reason to know he has a financial interest.” (Section 87100.) “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, a member of his or her immediate family,” or on certain enumerated economic interests including “[a]ny source of income . . . aggregating five hundred dollars (\$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).)

Foreseeability

The standard for foreseeability differs depending on whether an interest is explicitly involved in the decision. Regulation 18701 provides that “[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.” Neither Councilmembers’ interests are explicitly involved in the decisions in question. Thus, under Regulation 18701(b) where an interest is not explicitly involved in a decision, a financial effect need not be likely to be considered foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, then it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, then it is not reasonably foreseeable. (Regulation 18701(b).)

Materiality

Regulation 18702.3 provides the standards for determining the materiality of a financial effect on a non-profit source of income. Under that regulation, a reasonably foreseeable financial effect on a non-profit source of income is material if the decision may result in an increase or decrease of: the organization’s annual gross receipts, or the value of organization’s assets or liabilities, in an amount equal to or more than \$1,000,000; or five percent of the organization’s annual gross receipts, and the increase or decrease is equal to or greater than \$10,000. (Regulation 18702.3(a)(3)(A).)

Councilmember Hume

Councilmember Hume has a source of income interest in his wife’s non-profit employer, Sutter. As CNU has a pending land use application for medical center and campus before the City, the governmental decision before Councilmember Hume will not explicitly involve his economic interest. (See Regulation 18701(a).) However, the proposed project is significant in scale, as it includes a medical center and campus, as well as a teaching hospital. Thus, it is reasonably foreseeable that if another medical care provider were to open a medical center and campus, including a teaching hospital, in the City, Sutter would be financially affected. (See Regulation 18701(b).) Where a reasonably foreseeable financial effect would result in a change in the organization’s annual gross receipts, or the value of organization’s assets or liabilities, in an amount equal to or more than \$1,000,000, or 5% of the organization’s annual gross receipts, the financial effect is deemed “material.” (Regulation 18702.3(a)(3).) CNU could be a more desirable medical care provider than Sutter for reasons such as providing less expensive goods and services, or providing a wider range of services, including hospital facilities located within the City. A new medical center and hospital would affect the current state of competition and result in a loss for

Sutter. (Regulations 18701(b).) Accordingly, the reasonably foreseeable financial effect is material and Councilmember Hume is disqualified from taking part in considering and voting on the pending CNU hospital project, assuming a change in annual gross receipts, or the value of organization's assets or liabilities in excess of the monetary thresholds discussed above. We also note that, under the disqualification requirements of Regulation 18707, Councilmember Hume would have to recuse himself and leave the room while this matter is being considered.

Councilmember Suen

Councilmember Suen has a source of income interest in his wife's non-profit employer, Dignity. As CNU has a pending land use application for medical center and campus before the City, the governmental decision before Councilmember Suen will not explicitly involve his economic interest. (See Regulation 18701(a).) Where a reasonably foreseeable financial effect would result in a change in the organization's annual gross receipts, or the value of organization's assets or liabilities, in an amount equal to or more than \$1,000,000, or 5% of the organization's annual gross receipts, the financial effect is deemed "material." (Regulation 18702.3(a)(3).) As Dignity has already secured approval from the City to construct a new hospital in the City, it is reasonably foreseeable that if another medical care provider were to open a medical center and campus, including a teaching hospital, in the City, Dignity would be financially affected. The proposed CNU hospital project is significant in scale, and would create competition for Dignity, as there would be another hospital operating with the City. (See Regulation 18701(b).) Accordingly, the reasonably foreseeable financial effect is material and Councilmember Suen is disqualified from taking part in considering and voting on the pending CNU hospital project, assuming a change in annual gross receipts, or the value of organization's assets or liabilities in excess of the monetary thresholds discussed above. We also note that, under the disqualification requirements of Regulation 18707, Councilmember Suen would have to recuse himself and leave the room while this matter is being considered.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:aja