



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 16, 2020

Gleam Davis
Councilmember
City of Santa Monica
Gleam.Davis@SMGOV.NET

Re: Your Request for Advice
Our File No. A-20-117

Dear Ms. Davis:

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.

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. Additionally, the Commission does not advise about past conduct. (Regulation 18329(b)(8).) Therefore, nothing in this advice letter should be construed to advise about any conduct that has already taken place.

QUESTION

Do you have a conflict of interest that would preclude your participation in decisions concerning the Fairmont Miramar Hotel due to your spouse’s employment with Dell EMC?

CONCLUSION

Yes. The Act would prohibit you from taking part in decisions concerning the Fairmont Miramar Hotel because it is owned by Ocean Avenue LLC, an entity which is otherwise related to a business that is a source of income to you.

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 AS PRESENTED BY REQUESTER

You are a member of the Santa Monica City Council. Your husband works for Dell EMC, which is a subsidiary of Dell Technologies, Inc., a publicly traded corporation. Michael Dell is the CEO of Dell Technologies. Dell Technologies is a publicly traded corporation with about 250 million outstanding shares. Michael Dell is CEO and Chair of the Board of Directors. Your husband is not an officer, director, or managing agent of Dell EMC or Dell Technologies. He does not set policy, make employment decisions, or control or influence corporate strategy. He is a systems engineer that designs and sells large scale systems to business. His compensation is largely dependent on sales commissions. He has never met Michael Dell and does not have a personal relationship with any officer or director of Dell Technologies or Dell EMC.

The City Council will be considering development related matters regarding the Miramar Hotel located in Santa Monica. The Fairmont Miramar is owned by Ocean Avenue LLC, which has three owners: the Susan Lieberman Dell Separate Property Trust which owns 49 percent; MSD Portfolio L.P.-Investments which owns 42 percent; and Miramar Hotel Investor, a Delaware LLC, which owns 8 percent. The Susan Lieberman Dell Separate Property Trust is the separate property of Susan Dell²; MSD Portfolio is owned by Michael Dell; Miramar Hotel Investor is owned by four separate legal entities. You note that the Santa Monica City Council's decision on the Miramar project will not affect your husband's compensation or role at Dell EMC in any way.

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. (Section 87103.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a)).

Section 87103 defines financial interests to include:

- An interest in a source of income to the official, or promised income, except 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).)

Section 82030 defines "income" to include "any community property interest in the income of a spouse." You state that your husband is an employee of Dell EMC. Thus, according to the facts you have provided, you have a financial interest in Dell EMC.

² We note that Dell Technologies' Securities and Exchange Commission filings state that the Susan Lieberman Dell Separate Property Trust beneficially owns more than 10% of the Class C Common Stock of Dell Technologies Inc. <https://investors.delltechnologies.com/node/9056/html>

In addition, an official has an interest in any parent, subsidiary, or other related business of as source of income, as defined in Regulation 18700.2(b), which provides:

(b) Parent, Subsidiary, Otherwise Related Business Entity, defined.

(1) Parent - A business entity is a “parent” if it is a corporation that controls more than 50 percent of the voting stock of another corporation. The parent corporation is also a parent to any subsidiaries of the corporation that it controls.

(2) Subsidiary - A business entity is a “subsidiary” if it is a corporation whose voting stock is more than 50 percent controlled by another corporation. The subsidiary corporation is also a subsidiary to any corporation that controls its parent corporation.

(3) Otherwise related business entity. Business entities, other than a parent corporation as defined in subdivision (b)(1), are otherwise related if:

(A) The same person or persons together direct or control each business entity; or

(B) The same person or persons together have a 50 percent or greater ownership interest in each business entity.

Because you have an interest in Dell EMC, and Dell EMC is wholly owned by Dell Technologies, Inc., you also have a financial interest in Dell Technologies, Inc., which falls within the above definition of “parent.” An official with a financial interest in a business entity also has an interest in a parent or subsidiary of the business entity or an otherwise related business entity. (Regulation 18700.2(c).)

Business entities, other than a parent corporation, are “otherwise related” if: “(A) The same person or persons together direct or control each business entity; or (B) The same person or persons together have a 50 percent or greater ownership interest in each business entity.” (Regulation 18700.2(b)(3).) Ocean Avenue LLC has three owners: the Susan Lieberman Dell Separate Property Trust, which owns 49 percent; MSD Portfolio L.P.-Investments which, owns 42 percent; and Miramar Hotel Investor, a Delaware LLC, which owns 8 percent. In this case, The Fairmont Miramar, owned by Ocean Avenue LLC, is an “otherwise related business entity” because Michael Dell directs and controls Dell Technologies as the chair and CEO, and Michael and Susan Dell combined have 91 percent control of the Ocean Avenue LLC, which in turn owns the hotel. Thus, you have a financial interest in The Fairmont Miramar and Ocean Avenue LLC.

Foreseeability and Materiality - Business Entity and Source of Income

Regulation 18701(a) provides that a decision’s financial effect on an official’s financial interest is presumed to be reasonably foreseeable if the official’s interest is “explicitly involved” in the decision. An official’s interest is “explicitly involved” if the interest is a named party in, or the subject of, the decision. Moreover, a reasonably foreseeable financial effect on an interest in a source of income is material if the interest is a named party in, or the subject of, the decision under Regulation 18702.3(a).

In this case, the Fairmont Miramar and/or Ocean Avenue LLC would be a named party in, and the subject of, any development related matters regarding the Miramar Hotel before the City Council. Based on the facts provided, Fairmont Miramar and/or Ocean Avenue LLC are explicitly involved in the contemplated decisions. Thus, the financial effect of the decision on Ocean Avenue LLC is both foreseeable and material, and the Act prohibits you from taking part in these decisions.

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

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