



FAIR POLITICAL PRACTICES COMMISSION
CALIFORNIA • NEW YORK • NEW JERSEY • OHIO • TEXAS
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December 31, 2012

Mr. Richard O'Brien

REDACTED

Re: Warning Letter
FPPC No. 12/803; Richard O'Brien

Dear Mr. O'Brien:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),¹ found in Government Code section 81000, et seq. This letter is in response to a sworn complaint which alleged you participated in governmental decisions that may have had an effect on your economic interests.

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that on September 24, 2012, you participated in the approval of a warrant payment to O'Brien's Market in which you had a financial interest.

The Act provides that no public official at any level of state or local government shall make, participate in making or use his or her official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. To determine whether an individual has a disqualifying conflict of interest, the FPPC generally employs the following sequenced analysis: (1) is the individual a public official; (2) did or will the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) does the official have economic interests directly or indirectly involved in the governmental decision; (4) what is the applicable materiality standard for each involved economic interest; and (5) whether it is reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest. (See Section 87100 and Regulation 18700.)

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.

As a public official who made a governmental decision, steps one and two have already been determined. You have a financial interest in O'Brien's Market because you received income of \$500 or more as a store director within 12 months prior to the time when the relevant governmental decision is made. As for step three, your economic interest in O'Brien's Market was directly involved due to the fact that O'Brien's Market was named in the warrant register. (Regulation 18703.3.) Any reasonable foreseeable financial effect on a person who is a source of income and who is directly involved in the decision before the public official's agency is deemed material. (Regulation 18705.3(a).)

Your actions violated the Act because you have a financial interest in O'Brien's Market and you made a governmental decision that directly affected your source of income. However, because the amount approved was minimal, and you sought advice from the city attorney, we are closing this matter with a warning letter. In the future, you must take measures to ensure that you take the necessary steps to ensure you abstain from participating in decisions where you may have a conflict.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Please feel free to contact Teri Rindahl at 916.327.2018 with any questions you may have regarding this letter.

Sincerely,

REDACTED

Gary S. Winuk, Chief
Enforcement Division

GSW/tr

Cc: Patricia King