



FAIR POLITICAL PRACTICES COMMISSION

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January 15, 2013

Mr. James A. Wyatt
Attorney at Law
o/b/o Nick Mitchell

REDACTED

**RE: Warning Letter ✓
FPPC No. 12/76; Christopher F. Raine, Arlis Steele, Diane Dolf, and Nick Mitchell**

Dear Mr. Wyatt:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act")¹ found in Government Code Section 81000, and following. As you are aware, the Commission received an informal complaint against your client alleging violations of the conflict of interest provisions of the Act. These allegations referred to your client's January 18, 2011 recusal prior to a vote on the settlement of a lawsuit, and decisions concerning city water and sewer rates on July 21, 2011 and July 30, 2012, as a member of the Dunsmuir City Council.

The FPPC has completed its investigation of the facts in this case. As a result of our investigation, we found no evidence to indicate a conflict of interest violation; however, we did find that your client violated the Act when he failed to identify the financial interest that was the basis for the recusal at the January 18, 2011 city council meeting.

Under the Act, no public official at any level of state or local government may make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a disqualifying conflict of interest. (Section 87100.) To determine whether an individual has a disqualifying conflict of interest, the Commission generally employs the following sequenced

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.

analysis: (1) is the individual a public official; (2) did the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) what are the official's economic interests, (4) are the official's economic interests directly or indirectly involved in the governmental decision; (5) what is the applicable materiality standard for each economic interest involved; and (6) is it reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest. (See Regulation 18700.)

Under Section 87100, a conflict of interest exists when public official makes, participates in making, or attempt to use that official position to influence a governmental decision in which the official knows or has reason to know he or she has a "financial interest." An 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 the official's immediate family, or, among other things, on any business entity in which the official has an investment interest valued at \$2,000 or more, any real property (including leaseholds) in which the official has an investment interest valued at \$2,000 or more, or on any source of income aggregating \$500 or more which the official has received within 12 months of the decision. (Section 87103, subdivision (a), (b) and (c); Regulation 18704.5.)

Water Rate Decision

The economic interests that we examined included a business owned by your client, Thriftway Foods, and the real property interests associated with that business. The business was indirectly involved in the decisions on water and sewer rates; as it was not a named party in the decision, nor did it initiate the decision. Under Section 18704.2(a)(4), real property is directly involved in a governmental decision when the decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the real property in which the official has an interest. Since the property was subject to the modification of the existing water and sewer systems rates, it is directly involved.

Under Regulation 18707, a public official does not have a disqualifying conflict of interest in the governmental decision if the official can establish that the governmental decision will affect the public official's economic interests in a manner which is indistinguishable from the manner in which the decision will affect the public generally. Regulation 18707.2 (a), the public generally exception for rates, assessments, and similar decisions, applies to the decisions on water rates. The regulation states, in relevant part, that the financial effect of a governmental decision on the official's economic interest is indistinguishable from the decision's effect on the public generally if the decision is to establish or adjust charges or rates which are applied on a proportional basis on the official's economic interest and on a significant segment of the jurisdiction. Despite that fact that Respondent Mitchell owns a business located within the city, the decisions at issue involved cancelling water rate increases that were to be applied to all water users on a proportional basis.

Law Suit Settlement/Recusal

At the January 18, 2011 city council meeting, Respondent Mitchell recused himself from a decision on Resolution 2011-03, settlement of a lawsuit against the city, *Citizens for a Better Dunsmuir and Nick Mitchell v. City of Dunsmuir, et al.* Respondent Mitchell stated that he had a perceived conflict of interest and left the room, but failed to specify that the conflict resulted from being a named party to the suit.

Section 87105 outlines the disclosure and recusal requirements of the Act, Specifically Section (a)(1) requires the official to “publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public.”

As Respondent Mitchell failed to identify the interest that was the basis for the recusal at the January 18, 2011 city council meeting, he violated the Act. However, due to the specific circumstances of this case outline above, we determined that further enforcement action was not warranted since there was little public harm.

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.

The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act, so if you need forms or manuals, or guidance regarding your obligations, please call the Commission’s Technical Assistance Division at 1-866-275-3772. Please also visit our website at www.fppc.ca.gov.

Sincerely,

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Zachary W. Norton
Commission Counsel
Enforcement Division